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MT LEGISLATIVE HISTORY

Chapter 537 1987

Bill H 771 S _____ Original bill & hist. ✓ C

H. Committee on Bus. + Labor

Hearing Date(s) _____ ___C

2/18 ✓ C

_____ ___C

_____ ___C

Date Out 2/18 ✓ C

S. Committee on Bus. + Ind.

Hearing Date(s) _____ ___C

3/17 ✓ C

_____ ___C

_____ ___C

3/17 ✓ C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

HOUSE BILL NO. 771

INTRODUCED BY GLASER, THAYER

BY REQUEST OF THE STATE AUDITOR

IN THE HOUSE

FEBRUARY 14, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & LABOR.
FEBRUARY 18, 1987	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
FEBRUARY 19, 1987	PRINTING REPORT.
FEBRUARY 20, 1987	SECOND READING, DO PASS.
FEBRUARY 21, 1987	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 92; NOES, 0.
	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 23, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & INDUSTRY.
MARCH 18, 1987	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 21, 1987	SECOND READING, CONCURRED IN.
MARCH 23, 1987	ON MOTION, TAKEN FROM THIRD READING AND PLACED ON SECOND READING.
MARCH 24, 1987	SECOND READING, CONCURRED IN AS AMENDED.
MARCH 26, 1987	THIRD READING, CONCURRED IN. AYES, 50; NOES, 0.
	RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 8, 1987	RECEIVED FROM SENATE.
	SECOND READING, AMENDMENTS CONCURRED IN.
APRIL 9, 1987	THIRD READING, AMENDMENTS CONCURRED IN.
	SENT TO ENROLLING.

House BILL NO. 771

INTRODUCED BY

BY REQUEST OF THE STATE AUDITOR

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE LAWS RELATING TO THE AUTHORIZATION OF SURPLUS LINES INSURERS, AGENTS, AND INSURANCE; AMENDING SECTIONS 33-1-402, 33-1-614, 33-1-711, 33-2-119, 33-2-301 THROUGH 33-2-317, 33-2-706, 33-2-708, 33-17-1001, AND 33-18-212, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 33-2-301, MCA, is amended to read:

"33-2-301. Short title -- purpose. (1) This part constitutes and may be referred to as "The Surplus ~~Line~~ Lines Insurance Law".

(2) This part must be liberally construed and applied to:

(a) protect persons seeking insurance in this state;

(b) permit surplus lines insurance to be placed with reputable and financially sound unauthorized insurers and to be exported from this state pursuant to this part;

(c) establish a system of regulation that will permit orderly access to surplus lines insurance in this state and encourage authorized insurers to provide new and innovative types of insurance to consumers in this state; and

(d) protect revenues of this state."

NEW SECTION. Section 2. Definitions. As used in [this part], the following definitions apply:

(1) "Authorized insurer" means an insurer authorized pursuant to 33-2-101 to transact insurance in this state.

(2) "Eligible surplus lines insurer" means an unauthorized insurer with which a surplus lines agent may place surplus lines insurance under 33-2-307.

(3) "Export" means to place surplus lines insurance with an unauthorized insurer.

(4) "Kind of insurance" means one of the types of insurance required to be reported in the annual statement filed with the commissioner by an authorized insurer.

(5) "Producing agent" means the individual agent dealing directly with the person seeking insurance.

(6) "Surplus lines agent" means an individual, partnership, or corporation licensed under 33-2-305 to place surplus lines insurance (on risks resident, located, or to be performed in this state) with unauthorized insurers eligible to accept such insurance.

(7) "Surplus lines insurance" means any insurance (on risks resident, located, or to be performed in this state) permitted to be placed through a surplus lines agent with an unauthorized insurer eligible to accept the insurance. The

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term does not include the kinds of insurance exempted under [section 21].

(8) "Unauthorized insurer" means an insurer not authorized pursuant to 33-2-101 to transact insurance in this state. The term includes insurance exchanges authorized under the laws of other states.

Section 3. Section 33-2-302, MCA, is amended to read:

"33-2-302. Conditions precedent to sale of surplus ~~line~~ lines insurance ~~---agent's affidavit. (1) If certain insurance coverages cannot be procured from authorized insurers, such coverages, hereinafter designated "surplus lines", may be procured from unauthorized insurers subject to the following conditions:~~

~~(a) The insurance must be procured through a licensed surplus line agent;~~

~~(b) The full amount of insurance required must not be procurable, after diligent effort has been made to do so, from a majority of the insurers authorized to transact that kind and class of insurance in this state, and the amount of insurance placed in an unauthorized insurer shall be only the excess over the amount procurable from authorized insurers.~~ Insurance may be procured through a licensed surplus lines agent from an unauthorized insurer if:

(1) the insurer is an eligible surplus lines insurer;

(2) the full amount or kind of insurance cannot be

obtained from authorized insurers. The full amount or kind of insurance may be procured from an eligible surplus lines insurer if the agent makes a diligent search among the insurers who are authorized to transact and are actually writing the particular kind and class of insurance in this state and cannot obtain the full amount or kind of insurance from an authorized insurer.

~~(c)~~(3) ~~The~~ the insurance ~~must~~ is not be so procured for the purpose of securing advantages either as to:

~~(i)~~(a) a lower premium rate than would be accepted by an authorized insurer; or

~~(ii)~~(b) terms of the insurance contract; and

~~(2) At the time of procuring, effecting, and issuing any such insurance, the surplus line agent shall execute an affidavit, in form as prescribed or accepted by the commissioner, setting forth facts referred to in subsection (1) and file such affidavit with the commissioner. Affidavits filed under this subsection shall be subject to public inspection unless the commissioner determines that the public interest requires otherwise.~~

(4) all other requirements of this part are met."

Section 4. Section 33-2-303, MCA, is amended to read:

"33-2-303. ~~Endorsement~~ Filing and endorsement of contract. Every insurance contract, cover, note, or certificate of insurance procured and delivered as a surplus

~~line--coverage~~ lines insurance under this ~~law~~ part shall be filed with the commissioner and endorsed as ~~having--been~~ "issued in an unauthorized insurer under The Surplus ~~line~~ Lines Insurance Law, under ~~agent's~~ agent license No. ....." and "NOT covered by the property and casualty guaranty fund of this state if the unauthorized insurer becomes insolvent". The surplus ~~line~~ lines agent shall properly fill in and sign the endorsement."

Section 5. Section 33-2-304, MCA, is amended to read:

"33-2-304. Surplus ~~line~~ lines insurance valid. Insurance contracts procured as "surplus ~~line~~"-coverages lines insurance from unauthorized insurers in accordance with this law shall be fully valid and enforceable as to all parties and shall be given acceptance and recognition in all matters and respects to the same effect as like contracts issued by authorized insurers."

Section 6. Section 33-2-305, MCA, is amended to read:

"33-2-305. Licensing of surplus ~~line~~ lines agent -- fee and bond. ~~Any--person,--while--licensed--as--a--resident insurance--agent-of-this-state-as-to-property,-casualty,-and surety-insurances-and-who-is-deemed-by-the--commissioner--to be--qualified--therefor--by--insurance--experience-and-to-be trustworthy,-may-be-licensed-as--a--surplus--line--agent--as follows:~~

~~(1)--Application--to--the--commissioner-for-the-license~~

~~shall-be-made-on-forms-furnished-by-the-commissioner;~~

~~(2)--license-fee-in-the-amount-stated-in-33-2-708-shall be-paid-to-the-commissioner;-The-license-shall-expire-on-the April-1-next-after-its-date-of-issue;~~ (1) An agent licensed by this state may not procure a contract of surplus lines insurance with an unauthorized insurer unless the agent is licensed as a resident property, casualty, and surety insurance agent and possesses a current surplus lines insurance license issued by the commissioner.

(2) The commissioner shall issue a surplus lines license to any qualified holder of a current property, casualty, and surety insurance agent license only if the agent has:

(a) remitted to the commissioner the annual fee prescribed by 33-2-708;

(b) submitted to the commissioner a completed license application on a form supplied by the commissioner;

(c) been licensed as a property, casualty, and surety insurance agent continuously for 5 years or more; and

~~(3)~~(d) ~~Prior--to--issuance--of--license,-the-applicant shall-file~~ filed with the commissioner and thereafter for as long as the license remains in effect ~~he-shall-keep~~ kept in force a bond in favor of the state of Montana in the ~~penal sum~~ amount of ~~$2,000~~ $10,000, with authorized corporate sureties approved by the commissioner. The bond ~~shall~~ must

be conditioned that the agent will conduct business under the license in accordance with the provisions of The Surplus ~~line~~ Lines Insurance Law and that he will promptly remit the taxes provided by such law. The bond ~~shall~~ may not be terminated unless the surety gives the surplus lines agent, the producing agent, and the commissioner at least 30 days' prior written notice thereof ~~is filed with the commissioner~~.

(3) The license expires on April 1 after its date of issue. A surplus lines agent shall renew the license on or before March 1 of each year upon payment of the annual renewal fee prescribed in 33-2-708. A surplus lines agent who fails to apply for a renewal of the license on or before March 1 shall pay a fine of $100 before the commissioner renews the license.

(4) A corporation is eligible to be a resident surplus lines agent if:

(a) the corporate license lists the individuals within the corporation who have satisfied the requirements of this part to become surplus lines agents; and

(b) only those individuals listed on the corporate license transact surplus lines business."

Section 7. Section 33-2-306, MCA, is amended to read:

"33-2-306. Agent's authority under license -- acceptance of business from other agents -- placement fee. (1) Under a surplus ~~line agent's~~ lines agent license the

licensee ~~shall have the right to~~ may place surplus ~~line coverages~~ lines insurance, in compliance with The Surplus ~~line~~ Lines Insurance Law, with any foreign or alien insurer or insurers not otherwise authorized to transact insurance in this state and as to such coverages to act as agent in this state for such insurer or insurers.

(2) The surplus ~~line~~ lines agent may accept surplus ~~line business~~ lines insurance from any duly licensed agent of an authorized insurer and may compensate him therefor.

(3) A surplus lines agent who places or renews surplus lines insurance in accordance with subsection (1) may collect a placement fee of 0.5% of the premium charged to cover the costs of issuing and servicing the policy. The fee may not be less than $10 or more than $100."

Section 8. Section 33-2-307, MCA, is amended to read:

"33-2-307. ~~Surplus lines in solvent insurers~~. Requirements for eligible surplus lines insurers. ~~A surplus line agent shall not knowingly place surplus line insurance with insurers unsound financially. The agent shall ascertain the financial condition of the unauthorized insurer before placing insurance therewith. The agent shall so insure only either~~:

~~(1) with an insurer which is an authorized insurer in at least one state of the United States for the kind of insurance involved and which meets the requirements of~~

~~33-2-109 and 33-2-110, as applicable; or~~

~~(2) with an alien insurer, other than one qualified under (1) above, which has an established and effective trust fund of at least $1 million within the United States administered by a recognized financial institution and held for the benefit of all its policyholders in the United States or policyholders and creditors in the United States.~~

(1) A surplus lines agent may not place insurance with an unauthorized insurer unless, at the time of placement, the unauthorized insurer:

(a) has established satisfactory evidence of good reputation and financial integrity; and

(b) is qualified under one of the following subsections:

(i) the insurer maintains capital and surplus or its equivalent under the laws of its state of domicile, which equals the greater of:

(A) the minimum capital and surplus requirements of 33-2-109 and 33-2-110; or

(B) $2.5 million 1 year after [the effective date of this act] and $3.5 million 3 years after [the effective date of this act]. After 3 year from [the effective date of this act], an insurer possessing less than $4 million subcapital and surplus may satisfy the requirements of this subsection upon an affirmative finding of acceptability by the

commissioner. The commissioner's finding must be based upon such factors as quality of management, capital, and surplus of a parent company; company underwriting profit and investment income trends; and company record and reputation within the industry. The commissioner may not make an affirmative finding of acceptability when the surplus lines insurer's capital and surplus is less than $3 million.

(ii) in the case of Lloyd's or another similar unincorporated group of alien individual insurers, the insurer maintains a trust fund of not less than $50 million as security to the full amount thereof for all policyholders and creditors in the United States of each member of the group. The trust must comply with the terms and conditions established in subsection (1)(b)(iv) for alien insurers.

(iii) in the case of an insurance exchange created by the laws of individual states, the insurer maintains capital and surplus, or their substantial equivalent, of not less than $15 million in the aggregate. For an insurance exchange that maintains funds for the protection of each insurance exchange policyholder, each individual syndicate shall maintain minimum capital and surplus, or their substantial equivalent, of not less than $1.5 million. If the insurance exchange does not maintain funds for the protection of each insurance exchange policyholder, each individual syndicate shall meet the minimum capital and surplus requirements of

subsection (1)(b)(i).

(iv) in the case of an alien insurer, the insurer maintains in the United States an irrevocable trust fund in either a national bank or a member of the federal reserve system, in an amount not less than $1.5 million, for the protection of all its policyholders in the United States and such trust fund consists of cash, securities, or letters of credit or of investments of substantially the same character and quality as those which are eligible investments for the capital and statutory reserves of insurers authorized to write like kinds of insurance in this state. Such trust fund, which must be included in any calculation of capital and surplus or its equivalent, must have an expiration date which at no time may be less than 5 years. In addition, the alien insurer must appear on the national association of insurance commissioners' Non-Admitted Insurers Quarterly Listing.

(c) has provided the commissioner a copy of its current annual statement, certified by the insurer no more than 6 months after the close of the period reported upon (or quarterly if considered necessary by the commissioner), and which is either:

(i) filed with and approved by the regulatory authority in the state of domicile of the unauthorized insurer; or

(ii) certified by an accounting or auditing firm licensed in the jurisdiction of the insurer's state of domicile.

(2) In the case of an insurance exchange, the statement required by subsection (1)(c) may be an aggregate combined statement of all underwriting syndicates operating during the period reported.

(3) In addition to meeting the requirements in subsection (1), an insurer is an eligible surplus lines insurer only if it appears on the most recent list of eligible surplus lines insurers published at least semiannually by the commissioner. This subsection does not require the commissioner to place or maintain the name of any unauthorized insurer on the list of eligible surplus lines insurers. No action may lie against the commissioner or an employee of the commissioner for anything said in issuing the list of eligible surplus lines insurers referred to in this subsection.

(4) As used in this section, the following definitions apply:

(a) "Capital", as used in the financial requirements of 33-2-307, means funds invested in for stocks or other evidences of ownership.

(b) "Surplus", as used in the financial requirements of 33-2-307, means funds over and above liabilities and

capital of the insurer for the protection of policyholders."

NEW SECTION. Section 9. Withdrawal of eligibility from a surplus lines insurer. (1) The commissioner may declare an eligible surplus lines insurer ineligible if at any time the commissioner has reason to believe that it:

(a) is in unsound financial condition;

(b) is no longer eligible under 33-2-307;

(c) has willfully violated the laws of this state; or

(d) does not make reasonably prompt payment of just losses and claims in this state or elsewhere.

(2) The commissioner shall promptly mail notice of all such declarations to each surplus lines agent.

NEW SECTION. Section 10. Surplus lines advisory organizations -- examination by commissioner. (1) A surplus lines advisory organization of surplus lines agents may be formed to:

(a) facilitate and encourage compliance by its members with the laws of this state and the rules and regulations of the commissioner relative to surplus lines insurance;

(b) provide means for the confidential examination of all surplus lines insurance written by its members to determine whether such insurance complies with this part;

(c) communicate with organizations of authorized insurers with respect to the proper use of the surplus lines market; and

(d) receive and disseminate to its members information relative to surplus lines insurance.

(2) Each advisory organization shall file with the commissioner:

(a) a copy of its constitution, its articles of agreement or association, or its certificate of incorporation;

(b) a copy of its bylaws, rules, and regulations governing its activities;

(c) a current list of its members;

(d) the name and address of a resident of this state upon whom notices or orders of the commissioner or processes issued at his direction may be served; and

(e) an agreement that the commissioner may examine the advisory organization under the provisions of subsection (3).

(3) The commissioner may make or cause to be made an examination of each advisory organization. The reasonable cost of an examination shall be paid by the advisory organization upon presentation to it by the commissioner of a detailed account of such cost. The officers, managers, agents, and employees of the advisory organization may be examined at any time, under oath, and shall exhibit all books, records, accounts, documents, or agreements governing its method of operation. The commissioner shall furnish two

copies of the examination report to the examined advisory organization and shall notify the organization that it may, within 20 days of receipt of the report, request a hearing on the report or on any facts or recommendations contained in it. If the commissioner finds the advisory organization or any of its members to be in violation of this part, he may issue an order requiring the discontinuance of the violation.

(4) The commissioner may by order compel a surplus lines agent to join an advisory organization as a condition of continued licensure under this part.

Section 11. Section 33-2-308, MCA, is amended to read:

"33-2-308. Evidence of the insurance -- changes -- penalty. (1) Upon placing a surplus ~~line--coverage~~ lines insurance, the surplus ~~line~~ lines agent shall promptly issue and deliver to the insured or the producing agent evidence of the insurance, consisting either of the policy as issued by the insurer or, if such policy is not then available, a cover note or certificate of insurance signed or countersigned by the agent. Such cover note or certificate ~~shall~~ must show the subject, coverage, conditions, and term of the insurance, the premium charged and taxes collected from the insured, and the name and address of the insurer. If the direct risk is assumed by more than one insurer, the cover note or certificate ~~shall~~ must state the name and

address and proportion of the entire direct risk assumed by each such insurer.

(2) If after the issuance and delivery of any such cover note or certificate there is any change as to the identity of the insurers or the proportion of the direct risk assumed by the insurer as stated in the original cover note or certificate or in any other material respect as to the insurance coverage evidenced by the cover note or certificate, the agent shall promptly issue and deliver to the insured a substitute cover note or certificate accurately showing the current status of the coverage and the insurers responsible thereunder.

(3) If a policy issued by the insurer is not available upon placement of the insurance and the agent has issued and delivered a cover note or certificate as hereinabove provided, upon request therefor by the insured, the agent shall as soon as reasonably possible procure from the insurer its policy evidencing such insurance and deliver such policy to the insured in replacement of the cover note or certificate theretofore issued.

(4) Any surplus ~~line~~ lines agent who knowingly or negligently issues or delivers a false cover note or certificate of insurance or fails promptly to notify the insured of any material change with respect to such insurance by delivery to the insured of a substitute cover

note or certificate as provided in subsection (2) shall be guilty of a violation of this code and upon conviction shall be subject to the penalties provided by 33-1-104 or to any greater applicable penalty otherwise provided by law.

(5) A surplus lines agent may not issue or deliver any evidence of insurance or purport to insure or represent that insurance will be or has been written by any eligible surplus lines insurer unless he has authority from the insurer to cause the risk to be insured or has received information from the insurer in the regular course of business that such insurance has been granted."

Section 12. Section 33-2-309, MCA, is amended to read:

"33-2-309. Liability of insurer as to losses and unearned premiums. (1) As to a surplus ~~line~~ lines risk which has been assumed by an unauthorized insurer pursuant to ~~this surplus line insurance law~~ The Surplus Lines Insurance Law and if the premium thereon has been received by the surplus ~~line~~ lines agent who placed such insurance, in all questions thereafter arising under the coverage as between the insurer and the insured, the insurer shall be deemed to have received the premium due to it for such coverage. The insurer shall be liable to the insured as to losses covered by such insurance and for unearned premiums which may become payable to the insured upon cancellation of such insurance, whether or not in fact the agent is indebted to the insurer

with respect to such insurance or for any other cause. This provision shall not affect rights as between the insurer and the surplus ~~line~~ lines agent.

(2) A payment of premium to a surplus lines agent acting for a person other than himself in negotiating, continuing, or reviewing a policy of insurance under this part is considered to be payment to the insurer, notwithstanding any conditions or stipulations that may be inserted in the policy or contract.

~~(2)~~(3) Each unauthorized insurer assuming a surplus lines direct risk under ~~this surplus line insurance law shall be deemed~~ The Surplus Lines Insurance Law is considered thereby to have subjected itself to the terms of this section."

Section 13. Section 33-2-310, MCA, is amended to read:

"33-2-310. Records and annual statement -- affidavit. (1) Each surplus ~~line~~ lines agent shall keep a separate record and account of all business transacted under his license, including a copy of each daily report, if any, and of each policy, certificate of insurance, cover note, or other evidence of insurance issued by him. The records ~~shall~~ must be available for examination by the commissioner at any reasonable time within 5 years after the issuance of the ~~coverage~~ surplus lines insurance to which it relates.

(2) Prior to April 1 of each year the agent shall file

with the commissioner a statement for the calendar year preceding, showing:

(a) name and address of each insured for whom surplus ~~line~~ lines insurance was procured;

(b) name and home office address of each insurer providing ~~such~~ the surplus lines insurance;

(c) amount of each ~~such--coverage~~ surplus lines insurance policy, the premium rate, and the gross premium charged therefor;

(d) date and term of the policy;

(e) amount of premium returned on each policy canceled or not taken; ~~and~~

(f) amount of tax and other sums to be collected from the insured;

(g) identity of the producing agent;

(h) the application and any correspondence from the surplus lines insurer or its representative; and

~~(f)~~(i) such additional information as the commissioner may reasonably require.

(3) Each producing agent shall execute and each surplus lines agent shall file an affidavit, on a standardized form furnished by the commissioner, as to the diligent efforts to place the coverage with authorized insurers and the results of such efforts. An affidavit filed under this subsection is subject to public inspection unless

the commissioner determines that the public interest requires otherwise. The producing agent shall state in the affidavit that he has expressly advised the insured in writing prior to placing the insurance that:

(a) the surplus lines insurer with whom the insurance is placed is not authorized in this state and is not subject to the same supervision as an authorized insurer; and

(b) in the event of the insolvency of the surplus lines insurer, the property and casualty guaranty fund of the state will not pay losses under the surplus lines coverage."

Section 14. Section 33-2-311, MCA, is amended to read:

"33-2-311. Tax on surplus lines. There is imposed upon premiums collected for surplus ~~line~~ lines insurance transacted in this state a tax at the same rate and computed in the same manner as provided in subsection (2)(b)(i) of 33-2-705 as to premiums of authorized insurers, except that amounts collected from the insured specifically for applicable state and federal taxes, and in excess of the premium otherwise required, ~~shall--not--be--deemed~~ are not considered to be part of the premium for the purposes of such computation. Upon filing of the annual statement referred to in 33-2-310(2), the surplus ~~line~~ lines agent shall pay to the commissioner the amount of tax owing as to surplus ~~line~~ lines insurance business transacted by him

during the preceding calendar year. If a surplus ~~line~~ lines insurance policy covers ~~risk~~ risks or exposures only partially in this state, the tax payable ~~shall~~ must be computed upon the proportion of the premium which is properly allocable to the risks or exposures located in this state."

Section 15. Section 33-2-312, MCA, is amended to read:

"33-2-312. Penalty for failure to file statement or pay tax. Every surplus ~~line~~ lines agent who fails to make and file the annual statement as required under 33-2-310 or to pay the taxes as required under 33-2-311 ~~shall be~~ is liable to a penalty of $25 for each day of delinquency, commencing with April 1. The tax and penalty may be recovered in an action instituted by the commissioner in the name of the state in any court of competent jurisdiction, the attorney general representing him. The penalty when collected shall be paid to the state treasurer and placed to the credit of the general fund. The surplus ~~line--agent's~~ lines agent license ~~shall~~ is also be subject to revocation as provided in 33-2-313."

Section 16. Section 33-2-313, MCA, is amended to read:

"33-2-313. Revocation or suspension of ~~agent's~~ agent license. (1) The commissioner shall revoke or suspend any surplus ~~line~~ lines ~~agent's~~ agent license, together with his license as an insurance agent ~~or solicitor~~:

(a) if the agent fails to file his annual statement or to remit the tax as required by law;

(b) if the agent fails to keep the records or to allow the commissioner to examine his records, as required by law;

(c) if the agent falsifies the affidavit required by ~~33-2-302(2)~~ 33-2-310(3); ~~or~~

(d) if the agent removes the resident surplus lines agent office from this state;

(e) if the agent removes the resident surplus lines agent office accounts and records from this state during the period during which the accounts and records are required to be maintained under 33-2-310(1);

(f) if the agent closes the resident surplus lines agent office for a period of more than 30 business days, unless the commissioner grants permission otherwise;

(g) if the agent violates any provision of this part; or

~~(d)~~(h) for any of the causes for which an insurance agent's license may be revoked.

(2) The procedures provided by 33-17-1001 for the suspension or revocation of ~~agents'~~ agent licenses ~~shall be applicable~~ apply to suspension or revocation of a surplus ~~line agent's~~ lines agent license.

(3) ~~No~~ An agent whose license has been so revoked or suspended ~~shall~~ may not again be so licensed within 1 year

thereafter or until he pays all penalties and delinquent taxes ~~owing-by-him-have-been-paid~~ that he owes."

Section 17. Section 33-2-314, MCA, is amended to read:

"33-2-314. Actions against insurer -- venue ~~---service of-process~~. Every unauthorized insurer issuing a surplus ~~line-coverage~~ lines insurance policy under this ~~surplus-line insurance-law-shall-be-deemed~~ part is considered to be doing business in this state as an ~~unlicensed~~ unauthorized insurer and may be sued in this state upon any cause of action arising under any insurance contract so made by it. Such suit ~~shall~~ must be brought in the district court of the county wherein the plaintiff resides."

Section 18. Section 33-2-315, MCA, is amended to read:

"33-2-315. Commissioner appointed process agent -- service of process. (1) Every surplus ~~line~~ lines insurer before ~~insuring-as-such~~ transacting surplus lines insurance under this ~~law~~ part shall in writing appoint the commissioner as its true and lawful attorney upon whom legal process in any action or proceeding against it in this state shall be served and in such writing shall agree that any such process served upon such attorney shall be of the same legal force and validity as if served in this state upon such insurer and that such authority shall continue in force so long as any liability remains outstanding against it in this state. At the time of filing such appointment, the

insurer shall also file designation of the name and address of the person to whom process against it served upon the commissioner is to be forwarded. The insurer may change such designation by a new filing.

(2) Service upon such an insurer ~~shall~~ must be made upon the commissioner and in accordance with the procedures, requirements, and results as provided under 33-1-603."

NEW SECTION. Section 19. Penalties. A surplus lines agent who in this state represents or aids an unauthorized insurer in violation of this part is guilty of a misdemeanor and shall be fined not more than $1,000 or be imprisoned in the county jail for a term no longer than 6 months, or both.

Section 20. Section 33-2-316, MCA, is amended to read:

"33-2-316. Rules. (1) The commissioner shall make or may approve and adopt reasonable rules, consistent with this ~~surplus-line-insurance-law~~ part, for any or all of the following purposes:

(a) effectuation of ~~such--law~~ The Surplus Lines Insurance Law;

(b) establishment of procedures through which determination is to be made as to the eligibility of particular proposed coverages for placement with a surplus ~~line~~ lines insurer or insurers; and

(c) establishment, procedures, and operations of any voluntary organization of surplus ~~line~~ lines insurance

agents or others designed to assist such agents to comply with such law.

(2) Such rules shall be subject to the procedures and carry the penalty provided by 33-1-313."

Section 21. Section 33-2-317, MCA, is amended to read:

"33-2-317. Exemptions. The provisions of this surplus ~~line~~ lines insurance law controlling the ~~placing~~ placement of insurance with unauthorized insurers ~~shall~~ does not apply to reinsurance or to the following insurances when so placed by a licensed insurance ~~agents~~ agent of this state:

(1) wet marine and transportation insurances;

(2) insurance on subjects located, resident, or to be performed wholly outside of this state or on vehicles or aircraft owned and principally garaged outside this state;

(3) insurance on property or operations of railroads engaged in interstate commerce; and

(4) insurance of aircraft owned or operated by manufacturers of aircraft or aircraft operated in scheduled interstate flight or cargo of such aircraft or against liability, other than workers' compensation and employers' liability, arising out of the ownership, maintenance, or use of such aircraft."

Section 22. Section 33-1-402, MCA, is amended to read:

"33-1-402. Examination of agents, managers, and promoters. For the purpose of ascertaining compliance with

this code, the commissioner may as often as he deems advisable examine the accounts, records, documents, and transactions pertaining to or affecting its insurance affairs or proposed insurance affairs of:

(1) any insurance agent, solicitor, surplus ~~line~~ lines agent, general agent, or adjuster;

(2) any person having a contract under which he enjoys in fact the exclusive or dominant right to manage or control an insurer;

(3) any person holding the shares of voting stock or policyholder proxies of a domestic insurer, for the purpose of controlling the management thereof, as voting trustee or otherwise;

(4) any person engaged in or proposing to be engaged in or assisting in the promotion or formation of a domestic insurer or insurance holding corporation or corporation to finance a domestic insurer or the production of its business."

Section 23. Section 33-1-614, MCA, is amended to read:

"33-1-614. Exemptions from service of process provisions. Sections 33-1-611 through 33-1-613 shall not apply to:

(1) surplus ~~line~~ lines insurance lawfully effectuated under part 3, chapter 2;

(2) reinsurance; or

(3) any action or proceeding against an unauthorized insurer arising out of:

(a) wet marine and transportation insurance;

(b) insurance on or with respect to subjects located, resident, or to be performed wholly outside this state or on or with respect to vehicles or aircraft owned and principally garaged outside this state;

(c) insurance on property or operations of railroads engaged in interstate commerce; or

(d) insurance on aircraft or cargo of such aircraft or against liability, other than employer's liability, arising out of the ownership, maintenance, or use of such aircraft, where the policy or contract contains a provision designating the commissioner as its attorney for the acceptance of service of lawful process in any action or proceeding instituted by or on behalf of an insured or beneficiary arising out of any such policy or where the insurer enters a general appearance in any such action."

Section 24. Section 33-1-711, MCA, is amended to read:

"33-1-711. Appeals from the commissioner. (1) An appeal from the commissioner shall be taken only from an order on hearing or with respect to a matter as to which the commissioner has refused a hearing. Any person who was a party to such hearing or whose pecuniary interests are directly and immediately affected by any such order or

refusal and who is aggrieved thereby may, within 30 days after the order has been mailed or delivered to the persons entitled to receive the same, the commissioner's order denying rehearing or reargument has been so mailed or delivered, or the commissioner's refusal to grant a hearing, appeal from such order on hearing or such refusal of a hearing. The appeal shall be taken to the district court of Lewis and Clark County by filing written notice of appeal in such court and by filing a copy of such notice with the commissioner, except that in appeals from the suspension or revocation of the certificate of authority of a domestic insurer or of the license of an agent, solicitor, or surplus ~~line~~ lines agent, the person taking the appeal may at his option, in lieu of the district court of Lewis and Clark County, take the appeal to the district court of the county of Montana in which the insurer has its principal place of business or the licensee resides.

(2) Upon filing of the notice of appeal therein, the court shall have full jurisdiction and shall determine whether such filing shall operate as a stay of the order or action appealed from, except that in the following instances the filing of the notice of appeal shall automatically stay the order appealed from pending the judgment of the district court on the appeal:

(a) appeal from suspension or revocation of the

license of an agent, solicitor, or surplus ~~line~~ lines agent;

(b) appeal from suspension or revocation of the certificate of authority of an insurer.

(3) Within 20 days after filing of the copy of the notice of appeal in his office, the commissioner shall make and return to the court in which the appeal is pending a copy of his order appealed from and a full and complete transcript, duly certified by the commissioner, of his record of the hearing upon which the order was issued, together with all exhibits and documentary evidence introduced thereat. If the appeal is from an action of the commissioner with respect to which a hearing was refused, the commissioner shall within such 20-day period make and return to the court a full and complete transcript, duly certified by him, of all documents on file in his office directly relating to the matter as to which such appeal is taken.

(4) Upon receipt of such transcripts and evidence, the court shall hear the matter de novo as soon as reasonably possible thereafter. Upon the hearing of the appeal, the court shall consider the evidence contained in the transcript, exhibits, and documents therein filed by the commissioner, together with such additional proper evidence as may be offered by any party to the appeal.

(5) After hearing the appeal, the court may affirm,

modify, or reverse the order or action of the commissioner in whole or in part or remand the action to the commissioner for further proceedings in accordance with the court's direction.

(6) Costs shall be awarded as in civil actions.

(7) Appeal may be taken to the supreme court from the judgment of the district court as in other civil cases to which the state is a party. A stay of the effectiveness of any such judgment may be made only by order of the supreme court upon the giving of such security as that court deems proper.

(8) This section shall not apply to appeals as to matters covered by chapter 16."

Section 25. Section 33-2-119, MCA, is amended to read:

"33-2-119. Suspension or revocation for violations and special grounds. (1) The commissioner may, in his discretion, suspend or revoke an insurer's certificate of authority if, after a hearing thereon, he finds that the insurer has:

(a) violated any lawful order of the commissioner or any provision of this code other than those for which suspension or revocation is mandatory;

(b) reinsured more than 30% of its risks, resident, located, or to be performed in Montana, in another insurer. In considering suspension or revocation, the commissioner

shall consider all relevant factors, including whether:

(i) after the reinsurance transaction all parties will be in compliance with Montana law; and

(ii) the transaction will substantially reduce protection and service to Montana policyholders.

(2) The commissioner shall, after a hearing thereon, suspend or revoke an insurer's certificate of authority if he finds that the insurer:

(a) is in unsound condition or in such condition or using such methods or practices in the conduct of its business as to render its further transaction of insurance in Montana injurious or hazardous to its policyholders or to the public;

(b) has refused to be examined or to produce its accounts, records, and files for examination or if any of its officers have refused to give information with respect to its affairs, when required by the commissioner;

(c) has failed to pay any final judgment rendered against it in Montana within 30 days after the judgment became final;

(d) with such frequency as to indicate its general business practice in Montana, has without just cause refused to pay proper claims arising under its policies, whether any such claim is in favor of an insured or is in favor of a third person with respect to the liability of an insured to

such third person, or without just cause compels such insured or claimant to accept less than the amount due them or to employ attorneys or to bring suit against the insurer or such an insured to secure full payment or settlement of such claims;

(e) is affiliated with and under the same general management or interlocking directorate or ownership as another insurer which transacts direct insurance in Montana without having a certificate of authority therefor, except as permitted as to a surplus ~~line~~ lines insurer under part 3 of this chapter.

(3) The commissioner may, in his discretion and without advance notice or a hearing thereon, immediately suspend the certificate of authority of any insurer as to which proceedings for receivership, conservatorship, rehabilitation, or other delinquency proceedings have been commenced in any state."

Section 26. Section 33-2-706, MCA, is amended to read:

"33-2-706. Report and tax of independently procured coverages. (1) Every insured who in this state procures or causes to be procured or continues or renews insurance in an unauthorized foreign insurer or any self-insurer who in this state so procures or continues excess loss, catastrophe, or other insurance upon a subject of insurance resident, located, or to be performed within this state, other than

insurance procured through a surplus ~~line~~ lines agent pursuant to The Surplus ~~line~~ Lines Insurance Law or exempted from such law under 33-2-317, shall, within 30 days after the date such insurance was so procured, continued, or renewed, file a written report of the same with the commissioner on forms designated by the commissioner and furnished to such an insured upon request. The report shall show the name and address of the insured or insureds, name and address of the insurer, the subject of the insurance, a general description of the coverage, the amount of premium currently charged therefor, and such additional pertinent information as is reasonably requested by the commissioner. If any such insurance covers also a subject of insurance resident, located, or to be performed outside this state, a proper pro rata portion of the entire premium payable for all such insurance shall be allocated as to the subjects of insurance resident, located, or to be performed in this state, for the purposes of this section.

(2) Any insurance in an unauthorized insurer procured through negotiations or an application in whole or in part occurring or made within or from within this state or for which premiums in whole or in part are remitted directly or indirectly from within this state shall be deemed to be insurance procured or continued or renewed in this state within the intent of subsection (1) above.

(3) For the general support of the government of this state there is levied upon the obligation, chose in action, or right represented by the premium charged or payable for such insurance a tax at the rate of 2 3/4% of the gross amount of such premium. The insured shall withhold the amount of the tax from the amount of premium charged by and otherwise payable to the insurer for such insurance, and within 30 days after the insurance was so procured, continued, or renewed and coincidentally with the filing with the commissioner of the report provided for in subsection (1) above, the insured shall pay the amount of the tax to the state treasurer through the commissioner.

(4) If the insured fails to withhold from the premium the amount of tax herein levied, the insured shall be liable for the amount thereof and shall pay the same to the commissioner within the time stated in subsection (3) above.

(5) The tax imposed hereunder if delinquent shall bear interest at the rate of 6% per annum, compounded annually.

(6) The tax shall be collectable from the insured by civil action brought by the commissioner.

(7) This section does not abrogate or modify and shall not be construed or deemed to abrogate or modify any provision of 33-2-104 or 33-2-105 or any other provision of this code.

(8) This section does not apply as to life or

disability insurances."

Section 27. Section 33-2-708, MCA, is amended to read:

"33-2-708. Fees and licenses. (1) The commissioner shall collect in advance and the persons so served shall so pay to the commissioner the following fees and licenses:

(a) certificates of authority:

(i) for filing applications for original certificates of authority, articles of incorporation (except original articles of incorporation of domestic insurers as provided in subsection (b) below) and other charter documents, bylaws, financial statement, examination report, power of attorney to the commissioner, and all other documents and filings required in connection with such application and for issuance of an original certificate of authority, if issued:

(A) domestic insurers ..... $ 30.00

(B) foreign insurers 300.00

(ii) annual continuation of certificate of authority 300.00

(iii) reinstatement of certificate of authority 25.00

(b) articles of incorporation:

(i) filing original articles of incorporation of domestic insurer, exclusive of fees required to be paid by the corporation to the secretary of state 20.00

(ii) filing amendment of articles of incorporation,

domestic and foreign insurers, exclusive of fees required to be paid to the secretary of state by a domestic corporation 10.00

(c) filing bylaws or amendment thereto where required 5.00

(d) filing annual statement of insurer, other than as part of application for original certificate of authority 25.00

(e) resident agent's license:

(i) application for original license, including issuance of license, if issued (life and/or disability) 10.00

(ii) application for original license, including issuance of license, if issued (other than life and/or disability) 10.00

(iii) appointment of agent, each insurer 10.00

(iv) annual renewal, each insurer 10.00

(v) temporary license 10.00

(vi) amendment of license (excluding additions thereto) or reissuance of master license 10.00

(f) nonresident agent's license:

(i) application for original license, including issuance of license, if issued (life and/or disability) 100.00

(ii) application for original license, including

issuance of license, if issued (other than life and/or disability) 100.00

(iii) appointment of agent, each insurer 10.00

(iv) annual renewal, each insurer 10.00

(v) amendment of license (excluding additions thereto) or reissuance of master license 10.00

(g) solicitor's license:

(i) application for original license, including issuance of license, if issued 5.00

(ii) annual renewal of license 5.00

(h) examination for license as agent or solicitor, each examination 10.00

(i) surplus ~~line agent's~~ lines agent license:

(i) application for original license and for issuance of license, if issued 25.00

(ii) annual renewal of license 25.00

(j) adjuster's license:

(i) application for original license and for issuance of license, if issued 10.00

(ii) annual renewal of license 10.00

(k) insurance vending machine license, each machine, each year 10.00

(l) commissioner's certificate under seal (except when on certificates of authority or licenses) 3.00

(m) copies of documents on file in the commissioner's

office, per page ..... .50

(n) policy forms:

(i) filing each policy form 25.00

(ii) filing each application, rider, endorsement, amendment, insert page, schedule of rates, and clarification of risks 10.00

(iii) maximum charge if policy and all forms submitted at one time or resubmitted for approval within 180 days 50.00

(2) The commissioner shall promptly deposit with the state treasurer to the credit of the general fund of this state all fines and penalties and those amounts received pursuant to 33-2-311, 33-2-705, and 33-2-706 collected by him pursuant to Title 33 and the rules adopted thereunder.

(3) All fees are considered fully earned when received. In the event of overpayment, only those amounts in excess of $10 will be refunded.

(4) All fees and examination and miscellaneous charges, except fines or penalties or those amounts received pursuant to 33-2-311, 33-2-705, or 33-2-706, collected by the commissioner pursuant to Title 33 and the rules adopted thereunder must be deposited in the insurance regulatory trust account pursuant to 17-2-121 through 17-2-123."

Section 28. Section 33-17-1001, MCA, is amended to read:

"33-17-1001. Suspension, revocation, or refusal of license. (1) Except as provided in 33-17-411, the commissioner may suspend for not more than 12 months or may revoke or refuse to continue any license issued under this chapter or any surplus ~~line~~ lines agent license if, after hearing held on not less than 20 days' advance notice by ~~registered--or~~ certified mail of such hearing and of the charges against the licensee given as provided in 33-1-314(3) to the licensee and to the insurers represented, as to an agent, or to the appointing agent, as to a solicitor, he finds that as to the licensee any one or more of the following causes exist:

(a) for any cause for which issuance of the license could have been refused had it then existed and been known to the commissioner;

(b) for obtaining or attempting to obtain any such license through misrepresentation or fraud;

(c) for violation of or noncompliance with any applicable provision of this code or for willful violation of any lawful rule or order of the commissioner;

(d) for misappropriation or conversion to his own use or illegal withholding of moneys or property belonging to policyholders or insurer or beneficiaries or others and received in conduct of business under the license;

(e) conviction, by final judgment, of a felony

involving moral turpitude;

(f) if in the conduct of his affairs under the license the licensee has used fraudulent or dishonest practices or has shown himself to be incompetent, untrustworthy, or a source of injury and loss to the public.

(2) The license of a firm or corporation may be suspended, revoked, or refused also for any of such causes as relate to any individual designated in the license to exercise its powers."

Section 29. Section 33-18-212, MCA, is amended to read:

"33-18-212. Illegal dealing in premiums -- improper charges for insurance. (1) No person shall willfully collect any sum as premium or charge for insurance, which insurance is not then provided or is not in due course to be provided (subject to acceptance of the risk by the insurer) by an insurance policy issued by an insurer as authorized by this code.

(2) No person shall willfully collect as premium or charge for insurance any sum in excess of or less than the premium or charge applicable to such insurance and, as specified in the policy, in accordance with the applicable classifications and rates as filed with and approved by the commissioner; or in cases where classifications, premiums, or rates are not required by this code to be so filed and

approved, such premiums and charges shall not be in excess of or less than those specified in the policy and as fixed by the insurer. This provision shall not be deemed to prohibit the charging and collection, by surplus ~~line~~ lines agents licensed under chapter 2, part 3, of the amount of applicable state and federal taxes in addition to the premium required by the insurer. It shall not be deemed to prohibit the charging and collection, by a life insurer, of amounts actually to be expended for medical examination of an applicant for life insurance or for reinstatement of a life insurance policy. The provision of this subsection does not prohibit the collection from an insured of a placement fee, not to exceed 7 1/2% of the annual premium, for placement through the state compensation insurance fund by a duly licensed casualty insurance agent. This placement fee is not a premium as defined in 33-15-102.

(3) Each violation of this section shall be punishable under 33-1-104."

NEW SECTION. Section 30. Extension of authority. Any existing authority of the commissioner of insurance to make rules on the subject of the provisions of this act is extended to the provisions of this act.

NEW SECTION. Section 31. Codification instruction. Sections 2, 9, 10, and 19 are intended to be codified as an integral part of Title 33, chapter 2, part 3, and the

provisions of Title 33, chapter 2, part 3, apply to sections 2, 9, 10, and 19.

NEW SECTION. Section 32. Saving clause. This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act.

NEW SECTION. Section 33. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 34. Effective date. This act is effective on passage and approval.

-End-

HOUSE BILL NO. 771

INTRODUCED BY GLASER, THAYER

BY REQUEST OF THE STATE AUDITOR

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE LAWS RELATING TO THE AUTHORIZATION OF SURPLUS LINES INSURERS, AGENTS, AND INSURANCE; AMENDING SECTIONS 33-1-402, 33-1-614, 33-1-711, 33-2-119, 33-2-301 THROUGH 33-2-317, 33-2-706, 33-2-708, 33-17-1001, AND 33-18-212, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 33-2-301, MCA, is amended to read:

"33-2-301. Short title -- purpose. (1) This part constitutes and may be referred to as "The Surplus ~~Line~~ Lines Insurance Law".

(2) This part must be ~~liberally construed and~~ applied to:

(a) protect persons seeking insurance in this state;

(b) permit surplus lines insurance to be placed with reputable and financially sound unauthorized insurers and to be exported from this state pursuant to this part;

(c) establish a system of regulation that will permit orderly access to surplus lines insurance in this state and encourage authorized insurers to provide new and innovative types of insurance to consumers in this state; and

(d) protect revenues of this state."

NEW SECTION. Section 2. Definitions. As used in [this part], the following definitions apply:

(1) "Authorized insurer" means an insurer authorized pursuant to 33-2-101 to transact insurance in this state.

(2) "Eligible surplus lines insurer" means an unauthorized insurer with which a surplus lines agent may place surplus lines insurance under 33-2-307.

(3) "Export" means to place surplus lines insurance with an unauthorized insurer.

(4) "Kind of insurance" means one of the types of insurance required to be reported in the annual statement filed with the commissioner by an authorized insurer.

(5) "Producing agent" means the individual agent dealing directly with the person seeking insurance.

(6) "Surplus lines agent" means an individual, partnership, or corporation licensed under 33-2-305 to place surplus lines insurance (on risks resident, located, or to be performed in this state) with unauthorized insurers eligible to accept such insurance.

(7) "Surplus lines insurance" means any insurance (on risks resident, located, or to be performed in this state) permitted to be placed through a surplus lines agent with an unauthorized insurer eligible to accept the insurance. The

term does not include the kinds of insurance exempted under [section 2].

~~(8)~~ "Unauthorized insurer" means an insurer not authorized pursuant to 33-2-101 to transact insurance in this state. The term includes insurance exchanges authorized under the laws of other states.

Section 3. Section 33-2-302, MCA, is amended to read:

"33-2-302. Conditions precedent to sale of surplus ~~line~~ lines insurance ~~---agent's affidavit. (1) If certain insurance coverages cannot be procured from authorized insurers, such coverages, hereinafter designated "surplus lines", may be procured from unauthorized insurers subject to the following conditions:~~

~~(a) The insurance must be procured through a licensed surplus line agent;~~

~~(b) The full amount of insurance required must not be procurable, after diligent effort has been made to do so, from a majority of the insurers authorized to transact that kind and class of insurance in this state, and the amount of insurance placed in an unauthorized insurer shall be only the excess over the amount procurable from authorized insurers.~~ Insurance may be procured through a licensed surplus lines agent from an unauthorized insurer if:

(1) the insurer is an eligible surplus lines insurer;

(2) the full amount or kind of insurance cannot be

obtained from authorized insurers. The full amount or kind of insurance may be procured from an eligible surplus lines insurer if the agent makes a diligent search among the insurers who are authorized to transact and are actually writing the particular kind and class of insurance in this state and cannot obtain the full amount or kind of insurance from an authorized insurer.

~~(c)~~(3) The the insurance must is not be so procured for the purpose of securing advantages either as to:

~~(i)~~(a) a lower premium rate than would be accepted by an authorized insurer; or

~~(ii)~~(b) terms of the insurance contract; and

~~(2) At the time of procuring, effecting, and issuing any such insurance, the surplus line agent shall execute an affidavit, in form as prescribed or accepted by the commissioner, setting forth facts referred to in subsection (1) and file such affidavit with the commissioner. Affidavits filed under this subsection shall be subject to public inspection unless the commissioner determines that the public interest requires otherwise.~~

(4) all other requirements of this part are met."

Section 4. Section 33-2-303, MCA, is amended to read:

"33-2-303. Endorsement Filing and endorsement of contract. Every insurance contract, cover, note, or certificate of insurance procured and delivered as a surplus

~~line coverage~~ lines insurance under this ~~law~~ part shall be ~~filed with the commissioner and endorsed as having been issued~~ in an unauthorized insurer under The Surplus ~~Line~~ Lines Insurance Law, under ~~agent's~~ agent license No. ....." and "NOT covered by the property and casualty guaranty fund of this state if the unauthorized insurer becomes insolvent". The surplus ~~line~~ lines agent shall properly fill in and sign the endorsement."

~~Section 5.~~ Section 33-2-304, MCA, is amended to read:

~~"33-2-304. Surplus line~~ lines insurance valid. Insurance contracts procured as "surplus ~~line~~"-coverages lines insurance from unauthorized insurers in accordance with this law shall be fully valid and enforceable as to all parties and shall be given acceptance and recognition in all matters and respects to the same effect as like contracts issued by authorized insurers."

~~Section 6.~~ Section 33-2-305, MCA, is amended to read:

~~"33-2-305. Licensing of surplus line~~ lines agent -- ~~fee and bond. Any person while licensed as a resident insurance agent of this state as to property, casualty, and surety insurances and who is deemed by the commissioner to be qualified therefor by insurance experience and to be trustworthy may be licensed as a surplus line agent as follows:~~

~~(1) Application to the commissioner for the license~~

~~shall be made on forms furnished by the commissioner.~~

~~(2) License fee in the amount stated in 33-2-708 shall be paid to the commissioner. The license shall expire on the April 1 next after its date of issue.~~ (1) An agent licensed by this state may not procure a contract of surplus lines insurance with an unauthorized insurer unless the agent is licensed as a resident property, casualty, and surety insurance agent and possesses a current surplus lines insurance license issued by the commissioner.

(2) The commissioner shall issue a surplus lines license to any qualified holder of a current property, casualty, and surety insurance agent license only if the agent has:

(a) remitted to the commissioner the annual fee prescribed by 33-2-708;

(b) submitted to the commissioner a completed license application on a form supplied by the commissioner;

(c) been licensed as a property, casualty, and surety insurance agent continuously for 5 years or more; and

~~(3)~~(d) Prior ~~to issuance of license, the applicant shall file~~ filed with the commissioner and thereafter for as long as the license remains in effect ~~he shall keep~~ kept in force a bond in favor of the state of Montana in the ~~penal~~ sum amount of ~~$2,000~~ $10,000, with authorized corporate sureties approved by the commissioner. The bond ~~shall~~ must

be conditioned that the agent will conduct business under the license in accordance with the provisions of The Surplus ~~line~~ Lines Insurance Law and that he will promptly remit the taxes provided by such law. The bond ~~shall~~ may not be terminated unless the surety gives the surplus lines agent, the producing agent, and the commissioner at least 30 days' prior written notice thereof ~~is filed with the commissioner~~.

(3) The license expires on April 1 after its date of issue. A surplus lines agent shall renew the license on or before March 1 of each year upon payment of the annual renewal fee prescribed in 33-2-708. A surplus lines agent who fails to apply for a renewal of the license on or before March 1 shall pay a fine of $100 before the commissioner renews the license.

(4) A corporation is eligible to be a resident surplus lines agent if:

(a) the corporate license lists the individuals within the corporation who have satisfied the requirements of this part to become surplus lines agents; and

(b) only those individuals listed on the corporate license transact surplus lines business."

Section 7. Section 33-2-306, MCA, is amended to read:

"33-2-306. Agent's authority under license -- acceptance of business from other agents -- placement fee. (1) Under a surplus ~~line agent's~~ lines agent license the

licensee ~~shall have the right to~~ may place surplus ~~line coverages~~ lines insurance, in compliance with The Surplus ~~line~~ Lines Insurance Law, with any foreign or alien insurer or insurers not otherwise authorized to transact insurance in this state and as to such coverages to act as agent in this state for such insurer or insurers.

(2) The surplus ~~line~~ lines agent may accept surplus ~~line business~~ lines insurance from any duly licensed agent of an authorized insurer and may compensate him therefor.

(3) A surplus lines agent who places or renews surplus lines insurance in accordance with subsection (1) may collect a placement fee of 0.5% of the premium charged to cover the costs of issuing and servicing the policy. The fee may not be less than $10 or more than $100."

Section 8. Section 33-2-307, MCA, is amended to read:

"33-2-307. ~~Surplus line insurers.~~ Requirements for eligible surplus lines insurers. ~~A surplus line agent shall not knowingly place surplus line insurance with insurers unsound financially. The agent shall ascertain the financial condition of the unauthorized insurer before placing insurance therewith. The agent shall so insure only either:~~

~~(1) with an insurer which is an authorized insurer in at least one state of the United States for the kind of insurance involved and which meets the requirements of~~

~~33-2-109 and 33-2-110, as applicable; or~~

~~(2) with an alien insurer, other than one qualified under (1) above, which has an established and effective trust fund of at least $1 million within the United States administered by a recognized financial institution and held for the benefit of all its policyholders in the United States or policyholders and creditors in the United States.~~

(1) A surplus lines agent may not place insurance with an unauthorized insurer unless, at the time of placement, the unauthorized insurer:

(a) has established satisfactory evidence of good reputation and financial integrity; and

(b) is qualified under one of the following subsections:

(i) the insurer maintains capital and surplus or its equivalent under the laws of its state of domicile, which equals the greater of:

(A) the minimum capital and surplus requirements of 33-2-109 and 33-2-110; or

(B) $2.5 million 1 year after [the effective date of this act] and $3.5 million 3 years after [the effective date of this act]. After 3 year YEARS from [the effective date of this act], an insurer possessing less than $4 million subcapital and surplus may satisfy the requirements of this subsection upon an affirmative finding of acceptability by

the commissioner. The commissioner's finding must be based upon such factors as quality of management, capital, and surplus of a parent company; company underwriting profit and investment income trends; and company record and reputation within the industry. The commissioner may not make an affirmative finding of acceptability when the surplus lines insurer's capital and surplus is less than $3 million.

(ii) in the case of Lloyd's or another similar unincorporated group of alien individual insurers, the insurer maintains a trust fund of not less than $50 million as security to the full amount thereof for all policyholders and creditors in the United States of each member of the group. The trust must comply with the terms and conditions established in subsection (1)(b)(iv) for alien insurers.

(iii) in the case of an insurance exchange created by the laws of individual states, the insurer maintains capital and surplus, or their substantial equivalent, of not less than $15 million in the aggregate. For an insurance exchange that maintains funds for the protection of each insurance exchange policyholder, each individual syndicate shall maintain minimum capital and surplus, or their substantial equivalent, of not less than $1.5 million. If the insurance exchange does not maintain funds for the protection of each insurance exchange policyholder, each individual syndicate shall meet the minimum capital and surplus requirements of

subsection (1)(b)(i).

(iv) in the case of an alien insurer, the insurer maintains in the United States an irrevocable trust fund in either a national bank or a member of the federal reserve system, in an amount not less than $1.5 million, for the protection of all its policyholders in the United States and such trust fund consists of cash, securities, or letters of credit or of investments of substantially the same character and quality as those which are eligible investments for the capital and statutory reserves of insurers authorized to write like kinds of insurance in this state. Such trust fund, which must be included in any calculation of capital and surplus or its equivalent, must have an expiration date which at no time may be less than 5 years. In addition, the alien insurer must appear on the national association of insurance commissioners' Non-Admitted Insurers Quarterly Listing.

(c) has provided the commissioner a copy of its current annual statement, certified by the insurer no more than 6 months after the close of the period reported upon (or quarterly if considered necessary by the commissioner), and which is either:

(i) filed with and approved by the regulatory authority in the state of domicile of the unauthorized insurer; or

(ii) certified by an accounting or auditing firm licensed in the jurisdiction of the insurer's state of domicile.

(2) In the case of an insurance exchange, the statement required by subsection (1)(c) may be an aggregate combined statement of all underwriting syndicates operating during the period reported.

(3) In addition to meeting the requirements in subsection (1), an insurer is an eligible surplus lines insurer only if it appears on the most recent list of eligible surplus lines insurers published at least semiannually by the commissioner. This subsection does not require the commissioner to place or maintain the name of any unauthorized insurer on the list of eligible surplus lines insurers. No action may lie against the commissioner or an employee of the commissioner for anything said in issuing the list of eligible surplus lines insurers referred to in this subsection.

(4) As used in this section, the following definitions apply:

(a) "Capital", as used in the financial requirements of 33-2-307, means funds invested in for stocks or other evidences of ownership.

(b) "Surplus", as used in the financial requirements of 33-2-307, means funds over and above liabilities and

capital of the insurer for the protection of policyholders."

NEW SECTION. Section 9. Withdrawal of eligibility from a surplus lines insurer. (1) The commissioner may declare an eligible surplus lines insurer ineligible if at any time the commissioner has reason to believe that it:

(a) is in unsound financial condition;

(b) is no longer eligible under 33-2-307;

(c) has willfully violated the laws of this state; or

(d) does not make reasonably prompt payment of just losses and claims in this state or elsewhere.

(2) The commissioner shall promptly mail notice of all such declarations to each surplus lines agent.

NEW SECTION. Section 10. Surplus lines advisory organizations -- examination by commissioner. (1) A surplus lines advisory organization of surplus lines agents may be formed to:

(a) facilitate and encourage compliance by its members with the laws of this state and the rules and regulations of the commissioner relative to surplus lines insurance;

(b) provide means for the confidential examination of all surplus lines insurance written by its members to determine whether such insurance complies with this part;

(c) communicate with organizations of authorized insurers with respect to the proper use of the surplus lines market; and

(d) receive and disseminate to its members information relative to surplus lines insurance.

(2) Each advisory organization shall file with the commissioner:

(a) a copy of its constitution, its articles of agreement or association, or its certificate of incorporation;

(b) a copy of its bylaws, rules, and regulations governing its activities;

(c) a current list of its members;

(d) the name and address of a resident of this state upon whom notices or orders of the commissioner or processes issued at his direction may be served; and

(e) an agreement that the commissioner may examine the advisory organization under the provisions of subsection (3).

(3) The commissioner may make or cause to be made an examination of each advisory organization. The reasonable cost of an examination shall be paid by the advisory organization upon presentation to it by the commissioner of a detailed account of such cost. The officers, managers, agents, and employees of the advisory organization may be examined at any time, under oath, and shall exhibit all books, records, accounts, documents, or agreements governing its method of operation. The commissioner shall furnish two

copies of the examination report to the examined advisory organization and shall notify the organization that it may, within 20 days of receipt of the report, request a hearing on the report or on any facts or recommendations contained in it. If the commissioner finds the advisory organization or any of its members to be in violation of this part, he may issue an order requiring the discontinuance of the violation.

(4) The commissioner may by order compel a surplus lines agent to join an advisory organization as a condition of continued licensure under this part.

Section 11. Section 33-2-308, MCA, is amended to read:

"33-2-308. Evidence of the insurance -- changes -- penalty. (1) Upon placing a surplus ~~line--coverage~~ lines insurance, the surplus ~~line~~ lines agent shall promptly issue and deliver to the insured or the producing agent evidence of the insurance, consisting either of the policy as issued by the insurer or, if such policy is not then available, a cover note or certificate of insurance signed or countersigned by the agent. Such cover note or certificate ~~shall~~ must show the subject, coverage, conditions, and term of the insurance, the premium charged and taxes collected from the insured, and the name and address of the insurer. If the direct risk is assumed by more than one insurer, the cover note or certificate ~~shall~~ must state the name and

address and proportion of the entire direct risk assumed by each such insurer.

(2) If after the issuance and delivery of any such cover note or certificate there is any change as to the identity of the insurers or the proportion of the direct risk assumed by the insurer as stated in the original cover note or certificate or in any other material respect as to the insurance coverage evidenced by the cover note or certificate, the agent shall promptly issue and deliver to the insured a substitute cover note or certificate accurately showing the current status of the coverage and the insurers responsible thereunder.

(3) If a policy issued by the insurer is not available upon placement of the insurance and the agent has issued and delivered a cover note or certificate as hereinabove provided, upon request therefor by the insured, the agent shall as soon as reasonably possible procure from the insurer its policy evidencing such insurance and deliver such policy to the insured in replacement of the cover note or certificate theretofore issued.

(4) Any surplus ~~line~~ lines agent who knowingly or negligently issues or delivers a false cover note or certificate of insurance or fails promptly to notify the insured of any material change with respect to such insurance by delivery to the insured of a substitute cover

note or certificate as provided in subsection (2) shall be guilty of a violation of this code and upon conviction shall be subject to the penalties provided by 33-1-104 or to any greater applicable penalty otherwise provided by law.

(3) A surplus lines agent may not issue or deliver any evidence of insurance or purport to insure or represent that insurance will be or has been written by any eligible surplus lines insurer unless he has authority from the insurer to cause the risk to be insured or has received information from the insurer in the regular course of business that such insurance has been granted."

Section 12. Section 33-2-309, MCA, is amended to read:

"33-2-309. Liability of insurer as to losses and unearned premiums. (1) As to a surplus ~~line~~ lines risk which has been assumed by an unauthorized insurer pursuant to ~~this surplus-lines-insurance-law~~ The Surplus Lines Insurance Law and if the premium thereon has been received by the surplus ~~line~~ lines agent who placed such insurance, in all questions thereafter arising under the coverage as between the insurer and the insured, the insurer shall be deemed to have received the premium due to it for such coverage. The insurer shall be liable to the insured as to losses covered by such insurance and for unearned premiums which may become payable to the insured upon cancellation of such insurance, whether or not in fact the agent is indebted to the insurer

with respect to such insurance or for any other cause. This provision shall not affect rights as between the insurer and the surplus ~~line~~ lines agent.

(2) A payment of premium to a surplus lines agent acting for a person other than himself in negotiating, continuing, or reviewing a policy of insurance under this part is considered to be payment to the insurer, notwithstanding any conditions or stipulations that may be inserted in the policy or contract.

~~(2)~~(3) Each unauthorized insurer assuming a surplus lines direct risk under ~~this--surplus--line--insurance--law shall---be---deemed~~ The Surplus Lines Insurance Law is considered thereby to have subjected itself to the terms of this section."

Section 13. Section 33-2-310, MCA, is amended to read:

"33-2-310. Records and annual statement -- affidavit. (1) Each surplus ~~line~~ lines agent shall keep a separate record and account of all business transacted under his license, including a copy of each daily report, if any, and of each policy, certificate of insurance, cover note, or other evidence of insurance issued by him. The records ~~shall~~ must be available for examination by the commissioner at any reasonable time within 5 years after the issuance of the coverage surplus lines insurance to which it relates.

(2) Prior to April 1 of each year the agent shall file

with the commissioner a statement for the calendar year preceding, showing:

(a) name and address of each insured for whom surplus ~~line~~ lines insurance was procured;

(b) name and home office address of each insurer providing such the surplus lines insurance;

(c) amount of each such--coverage surplus lines insurance policy, the premium rate, and the gross premium charged therefor;

(d) date and term of the policy;

(e) amount of premium returned on each policy canceled or not taken; and

(f) amount of tax and other sums to be collected from the insured;

(g) identity of the producing agent;

(h) the application and any correspondence from the surplus lines insurer or its representative; and

(i) such additional information as the commissioner may reasonably require.

(3) Each producing agent shall execute and each surplus lines agent shall file an affidavit, on a standardized form furnished by the commissioner, as to the diligent efforts to place the coverage with authorized insurers and the results of such efforts. An affidavit filed under this subsection is subject to public inspection unless

the commissioner determines that the public interest requires otherwise. The producing agent shall state in the affidavit that he has expressly advised the insured in writing prior to placing the insurance that:

(a) the surplus lines insurer with whom the insurance is placed is not authorized in this state and is not subject to the same supervision as an authorized insurer; and

(b) in the event of the insolvency of the surplus lines insurer, the property and casualty guaranty fund of the state will not pay losses under the surplus lines coverage."

Section 14. Section 33-2-311, MCA, is amended to read:

"33-2-311. Tax on surplus lines. There is imposed upon premiums collected for surplus ~~line~~ lines insurance transacted in this state a tax at the same rate and computed in the same manner as provided in subsection (2)(b)(i) of 33-2-705 as to premiums of authorized insurers, except that amounts collected from the insured specifically for applicable state and federal taxes, and in excess of the premium otherwise required, ~~shall--not--be--deemed~~ are not considered to be part of the premium for the purposes of such computation. Upon filing of the annual statement referred to in 33-2-310(2), the surplus ~~line~~ lines agent shall pay to the commissioner the amount of tax owing as to surplus ~~line~~ lines insurance business transacted by him

during the preceding calendar year. If a surplus ~~line~~ lines insurance policy covers ~~risk~~ risks or exposures only partially in this state, the tax payable ~~shall~~ must be computed upon the proportion of the premium which is properly allocable to the risks or exposures located in this state.

Section 15. Section 33-2-312, MCA, is amended to read:

"33-2-312. Penalty for failure to file statement or pay tax. Every surplus ~~line~~ lines agent who fails to make and file the annual statement as required under 33-2-310 or to pay the taxes as required under 33-2-311 ~~shall be~~ is liable to a penalty of $25 for each day of delinquency, commencing with April 1. The tax and penalty may be recovered in an action instituted by the commissioner in the name of the state in any court of competent jurisdiction, the attorney general representing him. The penalty when collected shall be paid to the state treasurer and placed to the credit of the general fund. The surplus ~~line--agent's~~ lines agent license ~~shall~~ is also be subject to revocation as provided in 33-2-313."

Section 16. Section 33-2-313, MCA, is amended to read:

"33-2-313. Revocation or suspension of ~~agent's~~ agent license. (1) The commissioner shall revoke or suspend any surplus ~~line~~ lines ~~agent's~~ agent license, together with his license as an insurance agent ~~or solicitor~~:

(a) if the agent fails to file his annual statement or to remit the tax as required by law;

(b) if the agent fails to keep the records or to allow the commissioner to examine his records, as required by law;

(c) if the agent falsifies the affidavit required by ~~33-2-302(2)~~ 33-2-310(3); ~~or~~

(d) if the agent removes the resident surplus lines agent office from this state;

(e) if the agent removes the resident surplus lines agent office accounts and records from this state during the period during which the accounts and records are required to be maintained under 33-2-310(1);

(f) if the agent closes the resident surplus lines agent office for a period of more than 30 business days, unless the commissioner grants permission otherwise;

(g) if the agent violates any provision of this part; or

~~(d)~~(h) for any of the causes for which an insurance agent's license may be revoked.

(2) The procedures provided by 33-17-1001 for the suspension or revocation of ~~agents'~~ agent licenses ~~shall be applicable~~ apply to suspension or revocation of a surplus ~~line agent's~~ lines agent license.

(3) ~~No~~ An agent whose license has been so revoked or suspended ~~shall~~ may not again be so licensed within 1 year

thereafter or until he pays all penalties and delinquent taxes owing by him have been paid that he owes."

Section 17. Section 33-2-314, MCA, is amended to read:

"33-2-314. Actions against insurer -- venue ---service of process. Every unauthorized insurer issuing a surplus line coverage lines insurance policy under this surplus line insurance law shall be deemed part is considered to be doing business in this state as an unlicensed unauthorized insurer and may be sued in this state upon any cause of action arising under any insurance contract so made by it. Such suit shall must be brought in the district court of the county wherein the plaintiff resides."

Section 18. Section 33-2-315, MCA, is amended to read:

"33-2-315. Commissioner appointed process agent -- service of process. (1) Every surplus line lines insurer before insuring as such transacting surplus lines insurance under this law part shall in writing appoint the commissioner as its true and lawful attorney upon whom legal process in any action or proceeding against it in this state shall be served and in such writing shall agree that any such process served upon such attorney shall be of the same legal force and validity as if served in this state upon such insurer and that such authority shall continue in force so long as any liability remains outstanding against it in this state. At the time of filing such appointment, the

insurer shall also file designation of the name and address of the person to whom process against it served upon the commissioner is to be forwarded. The insurer may change such designation by a new filing.

(2) Service upon such an insurer shall must be made upon the commissioner and in accordance with the procedures, requirements, and results as provided under 33-1-603."

NEW SECTION. Section 19. Penalties. A surplus lines agent who in this state represents or aids an unauthorized insurer in violation of this part is guilty of a misdemeanor and shall be fined not more than $1,000 or be imprisoned in the county jail for a term no longer than 6 months, or both.

Section 20. Section 33-2-316, MCA, is amended to read:

"33-2-316. Rules. (1) The commissioner shall make or may approve and adopt reasonable rules, consistent with this surplus line insurance law part, for any or all of the following purposes:

(a) effectuation of such law The Surplus Lines Insurance Law;

(b) establishment of procedures through which determination is to be made as to the eligibility of particular proposed coverages for placement with a surplus line lines insurer or insurers; and

(c) establishment, procedures, and operations of any voluntary organization of surplus line lines insurance

agents or others designed to assist such agents to comply with such law.

(2) Such rules shall be subject to the procedures and carry the penalty provided by 33-1-313."

Section 21. Section 33-2-317, MCA, is amended to read:

"33-2-317. Exemptions. The provisions of this surplus ~~line~~ lines insurance law controlling the ~~placing~~ placement of insurance with unauthorized insurers shall does not apply to reinsurance or to the following insurances when so placed by a licensed insurance ~~agents~~ agent of this state:

(1) wet marine and transportation insurances;

(2) insurance on subjects located, resident, or to be performed wholly outside of this state or on vehicles or aircraft owned and principally garaged outside this state;

(3) insurance on property or operations of railroads engaged in interstate commerce; and

(4) insurance of aircraft owned or operated by manufacturers of aircraft or aircraft operated in scheduled interstate flight or cargo of such aircraft or against liability, other than workers' compensation and employers' liability, arising out of the ownership, maintenance, or use of such aircraft."

Section 22. Section 33-1-402, MCA, is amended to read:

"33-1-402. Examination of agents, managers, and promoters. For the purpose of ascertaining compliance with

this code, the commissioner may as often as he deems advisable examine the accounts, records, documents, and transactions pertaining to or affecting its insurance affairs or proposed insurance affairs of:

(1) any insurance agent, solicitor, surplus ~~line~~ lines agent, general agent, or adjuster;

(2) any person having a contract under which he enjoys in fact the exclusive or dominant right to manage or control an insurer;

(3) any person holding the shares of voting stock or policyholder proxies of a domestic insurer, for the purpose of controlling the management thereof, as voting trustee or otherwise;

(4) any person engaged in or proposing to be engaged in or assisting in the promotion or formation of a domestic insurer or insurance holding corporation or corporation to finance a domestic insurer or the production of its business."

Section 23. Section 33-1-614, MCA, is amended to read:

"33-1-614. Exemptions from service of process provisions. Sections 33-1-611 through 33-1-613 shall not apply to:

(1) surplus ~~line~~ lines insurance lawfully effectuated under part 3, chapter 2;

(2) reinsurance; or

(3) any action or proceeding against an unauthorized insurer arising out of:

(a) wet marine and transportation insurance;

(b) insurance on or with respect to subjects located, resident, or to be performed wholly outside this state or on or with respect to vehicles or aircraft owned and principally garaged outside this state;

(c) insurance on property or operations of railroads engaged in interstate commerce; or

(d) insurance on aircraft or cargo of such aircraft or against liability, other than employer's liability, arising out of the ownership, maintenance, or use of such aircraft, where the policy or contract contains a provision designating the commissioner as its attorney for the acceptance of service of lawful process in any action or proceeding instituted by or on behalf of an insured or beneficiary arising out of any such policy or where the insurer enters a general appearance in any such action."

Section 24. Section 33-1-711, MCA, is amended to read:

"33-1-711. Appeals from the commissioner. (1) An appeal from the commissioner shall be taken only from an order on hearing or with respect to a matter as to which the commissioner has refused a hearing. Any person who was a party to such hearing or whose pecuniary interests are directly and immediately affected by any such order or

refusal and who is aggrieved thereby may, within 30 days after the order has been mailed or delivered to the persons entitled to receive the same, the commissioner's order denying rehearing or reargument has been so mailed or delivered, or the commissioner's refusal to grant a hearing, appeal from such order on hearing or such refusal of a hearing. The appeal shall be taken to the district court of Lewis and Clark County by filing written notice of appeal in such court and by filing a copy of such notice with the commissioner, except that in appeals from the suspension or revocation of the certificate of authority of a domestic insurer or of the license of an agent, solicitor, or surplus ~~line~~ lines agent, the person taking the appeal may at his option, in lieu of the district court of Lewis and Clark County, take the appeal to the district court of the county of Montana in which the insurer has its principal place of business or the licensee resides.

(2) Upon filing of the notice of appeal therein, the court shall have full jurisdiction and shall determine whether such filing shall operate as a stay of the order or action appealed from, except that in the following instances the filing of the notice of appeal shall automatically stay the order appealed from pending the judgment of the district court on the appeal:

(a) appeal from suspension or revocation of the

license of an agent, solicitor, or surplus ~~line~~ lines agent;

(b) appeal from suspension or revocation of the certificate of authority of an insurer.

(3) Within 20 days after filing of the copy of the notice of appeal in his office, the commissioner shall make and return to the court in which the appeal is pending a copy of his order appealed from and a full and complete transcript, duly certified by the commissioner, of his record of the hearing upon which the order was issued, together with all exhibits and documentary evidence introduced thereat. If the appeal is from an action of the commissioner with respect to which a hearing was refused, the commissioner shall within such 20-day period make and return to the court a full and complete transcript, duly certified by him of all documents on file in his office directly relating to the matter as to which such appeal is taken.

(4) Upon receipt of such transcripts and evidence, the court shall hear the matter de novo as soon as reasonably possible thereafter. Upon the hearing of the appeal, the court shall consider the evidence contained in the transcript, exhibits, and documents therein filed by the commissioner, together with such additional proper evidence as may be offered by any party to the appeal.

(5) After hearing the appeal, the court may affirm,

modify, or reverse the order or action of the commissioner in whole or in part or remand the action to the commissioner for further proceedings in accordance with the court's direction.

(6) Costs shall be awarded as in civil actions.

(7) Appeal may be taken to the supreme court from the judgment of the district court as in other civil cases to which the state is a party. A stay of the effectiveness of any such judgment may be made only by order of the supreme court upon the giving of such security as that court deems proper.

(8) This section shall not apply to appeals as to matters covered by chapter 16."

Section 25. Section 33-2-119, MCA, is amended to read:

"33-2-119. Suspension or revocation for violations and special grounds. (1) The commissioner may, in his discretion, suspend or revoke an insurer's certificate of authority if, after a hearing thereon, he finds that the insurer has:

(a) violated any lawful order of the commissioner or any provision of this code other than those for which suspension or revocation is mandatory;

(b) reinsured more than 90% of its risks, resident, ~~,~~ located, or to be performed in Montana, in another insurer. In considering suspension or revocation, the commissioner

shall consider all relevant factors, including whether:

(i) after the reinsurance transaction all parties will be in compliance with Montana law; and

(ii) the transaction will substantially reduce protection and service to Montana policyholders.

(2) The commissioner shall, after a hearing thereon, suspend or revoke an insurer's certificate of authority if he finds that the insurer:

(a) is in unsound condition or in such condition or using such methods or practices in the conduct of its business as to render its further transaction of insurance in Montana injurious or hazardous to its policyholders or to the public;

(b) has refused to be examined or to produce its accounts, records, and files for examination or if any of its officers have refused to give information with respect to its affairs, when required by the commissioner;

(c) has failed to pay any final judgment rendered against it in Montana within 30 days after the judgment became final;

(d) with such frequency as to indicate its general business practice in Montana, has without just cause refused to pay proper claims arising under its policies, whether any such claim is in favor of an insured or is in favor of a third person with respect to the liability of an insured to

such third person, or without just cause compels such insured or claimant to accept less than the amount due them or to employ attorneys or to bring suit against the insurer or such an insured to secure full payment or settlement of such claims;

(e) is affiliated with and under the same general management or interlocking directorate or ownership as another insurer which transacts direct insurance in Montana without having a certificate of authority therefor, except as permitted as to a surplus ~~line~~ lines insurer under part 3 of this chapter.

(3) The commissioner may, in his discretion and without advance notice or a hearing thereon, immediately suspend the certificate of authority of any insurer as to which proceedings for receivership, conservatorship, rehabilitation, or other delinquency proceedings have been commenced in any state."

Section 26. Section 33-2-706, MCA, is amended to read:

"33-2-706. Report and tax of independently procured coverages. (1) Every insured who in this state procures or causes to be procured or continues or renews insurance in an unauthorized foreign insurer or any self-insurer who in this state so procures or continues excess loss, catastrophe, or other insurance upon a subject of insurance resident, located, or to be performed within this state, other than

insurance procured through a surplus ~~line~~ lines agent pursuant to The Surplus ~~Line~~ Lines Insurance Law or exempted from such law under 33-2-317, shall, within 30 days after the date such insurance was so procured, continued, or renewed, file a written report of the same with the commissioner on forms designated by the commissioner and furnished to such an insured upon request. The report shall show the name and address of the insured or insureds, name and address of the insurer, the subject of the insurance, a general description of the coverage, the amount of premium currently charged therefor, and such additional pertinent information as is reasonably requested by the commissioner. If any such insurance covers also a subject of insurance resident, located, or to be performed outside this state, a proper pro rata portion of the entire premium payable for all such insurance shall be allocated as to the subjects of insurance resident, located, or to be performed in this state, for the purposes of this section.

(2) Any insurance in an unauthorized insurer procured through negotiations or an application in whole or in part occurring or made within or from within this state or for which premiums in whole or in part are remitted directly or indirectly from within this state shall be deemed to be insurance procured or continued or renewed in this state within the intent of subsection (1) above.

(3) For the general support of the government of this state there is levied upon the obligation, chose in action, or right represented by the premium charged or payable for such insurance a tax at the rate of 2 3/4% of the gross amount of such premium. The insured shall withhold the amount of the tax from the amount of premium charged by and otherwise payable to the insurer for such insurance, and within 30 days after the insurance was so procured, continued, or renewed and coincidentally with the filing with the commissioner of the report provided for in subsection (1) above, the insured shall pay the amount of the tax to the state treasurer thrcugh the commissioner.

(4) If the insured fails to withhold from the premium the amount of tax herein levied, the insured shall be liable for the amount thereof and shall pay the same to the commissioner within the time stated in subsection (3) above.

(5) The tax imposed hereunder if delinquent shall bear interest at the rate of 6% per annum, compounded annually.

(6) The tax shall be collectable from the insured by civil action brought by the commissioner.

(7) This section does not abrogate or modify and shall not be construed or deemed to abrogate or modify any provision of 33-2-104 or 33-2-105 or any other provision of this code.

(8) This section does not apply as to life or

disability insurances."

Section 27. Section 33-2-708, MCA, is amended to read:

"33-2-708. Fees and licenses. (1) The commissioner shall collect in advance and the persons so served shall so pay to the commissioner the following fees and licenses:

(a) certificates of authority:

(i) for filing applications for original certificates of authority, articles of incorporation (except original articles of incorporation of domestic insurers as provided in subsection (b) below) and other charter documents, bylaws, financial statement, examination report, power of attorney to the commissioner, and all other documents and filings required in connection with such application and for issuance of an original certificate of authority, if issued:

(A) domestic insurers ..... $ 30.00

(B) foreign insurers 300.00

(ii) annual continuation of certificate of authority 300.00

(iii) reinstatement of certificate of authority 25.00

(b) articles of incorporation:

(i) filing original articles of incorporation of domestic insurer, exclusive of fees required to be paid by the corporation to the secretary of state 20.00

(ii) filing amendment of articles of incorporation,

domestic and foreign insurers, exclusive of fees required to be paid to the secretary of state by a domestic corporation 10.00

(c) filing bylaws or amendment thereto where required 5.00

(d) filing annual statement of insurer, other than as part of application for original certificate of authority 25.00

(e) resident agent's license:

(i) application for original license, including issuance of license, if issued (life and/or disability) 10.00

(ii) application for original license, including issuance of license, if issued (other than life and/or disability) 10.00

(iii) appointment of agent, each insurer 10.00

(iv) annual renewal, each insurer 10.00

(v) temporary license 10.00

(vi) amendment of license (excluding additions thereto) or reissuance of master license 10.00

(f) nonresident agent's license:

(i) application for original license, including issuance of license, if issued (life and/or disability) 100.00

(ii) application for original license, including

(ii) issuance of license, if issued (other than life and/or disability) 100.00

(iii) appointment of agent, each insurer 10.00

(iv) annual renewal, each insurer 10.00

(v) amendment of license (excluding additions thereto) or reissuance of master license 10.00

(g) solicitor's license:

(i) application for original license, including issuance of license, if issued 5.00

(ii) annual renewal of license 5.00

(h) examination for license as agent or solicitor, each examination 10.00

(i) surplus line agent's lines agent license:

(i) application for original license and for issuance of license, if issued 25.00

(ii) annual renewal of license 25.00

(j) adjuster's license:

(i) application for original license and for issuance of license, if issued 10.00

(ii) annual renewal of license 10.00

(k) insurance vending machine license, each machine, each year 10.00

(l) commissioner's certificate under seal (except when on certificates of authority or licenses) 3.00

(m) copies of documents on file in the commissioner's

office, per page ..... .50

(n) policy forms:

(i) filing each policy form 25.00

(ii) filing each application, rider, endorsement, amendment, insert page, schedule of rates, and clarification of risks 10.00

(iii) maximum charge if policy and all forms submitted at one time or resubmitted for approval within 180 days 50.00

(2) The commissioner shall promptly deposit with the state treasurer to the credit of the general fund of this state all fines and penalties and those amounts received pursuant to 33-2-311, 33-2-705, and 33-2-706 collected by him pursuant to Title 33 and the rules adopted thereunder.

(3) All fees are considered fully earned when received. In the event of overpayment, only those amounts in excess of $10 will be refunded.

(4) All fees and examination and miscellaneous charges, except fines or penalties or those amounts received pursuant to 33-2-311, 33-2-705, or 33-2-706, collected by the commissioner pursuant to Title 33 and the rules adopted thereunder must be deposited in the insurance regulatory trust account pursuant to 17-2-121 through 17-2-123."

Section 28. Section 33-17-1001, MCA, is amended to read:

"33-17-1001. Suspension, revocation, or refusal of license. (1) Except as provided in 33-17-411, the commissioner may suspend for not more than 12 months or may revoke or refuse to continue any license issued under this chapter or any surplus ~~line~~ lines agent license if, after hearing held on not less than 20 days' advance notice by registered or certified mail of such hearing and of the charges against the licensee given as provided in 33-1-314(3) to the licensee and to the insurers represented, as to an agent, or to the appointing agent, as to a solicitor, he finds that as to the licensee any one or more of the following causes exist:

(a) for any cause for which issuance of the license could have been refused had it then existed and been known to the commissioner;

(b) for obtaining or attempting to obtain any such license through misrepresentation or fraud;

(c) for violation of or noncompliance with any applicable provision of this code or for willful violation of any lawful rule or order of the commissioner;

(d) for misappropriation or conversion to his own use or illegal withholding of moneys or property belonging to policyholders or insurer or beneficiaries or others and received in conduct of business under the license;

(e) conviction, by final judgment, of a felony

involving moral turpitude;

(f) if in the conduct of his affairs under the license the licensee has used fraudulent or dishonest practices or has shown himself to be incompetent, untrustworthy, or a source of injury and loss to the public.

(2) The license of a firm or corporation may be suspended, revoked, or refused also for any of such causes as relate to any individual designated in the license to exercise its powers."

Section 29. Section 33-18-212, MCA, is amended to read:

"33-18-212. Illegal dealing in premiums -- improper charges for insurance. (1) No person shall willfully collect any sum as premium or charge for insurance, which insurance is not then provided or is not in due course to be provided (subject to acceptance of the risk by the insurer) by an insurance policy issued by an insurer as authorized by this code.

(2) No person shall willfully collect as premium or charge for insurance any sum in excess of or less than the premium or charge applicable to such insurance and, as specified in the policy, in accordance with the applicable classifications and rates as filed with and approved by the commissioner; or in cases where classifications, premiums, or rates are not required by this code to be so filed and

approved, such premiums and charges shall not be in excess of, or less than, those specified in the policy and as fixed by the insurer. This provision shall not be deemed to prohibit the charging and collection, by surplus ~~line~~ lines agents licensed under chapter 2, part 3, of the amount of applicable state and federal taxes in addition to the premium required by the insurer. It shall not be deemed to prohibit the charging and collection, by a life insurer, of amounts actually to be expended for medical examination of an applicant for life insurance or for reinstatement of a life insurance policy. The provision of this subsection does not prohibit the collection from an insured of a placement fee, not to exceed 7 1/2% of the annual premium, for placement through the state compensation insurance fund by a duly licensed casualty insurance agent. This placement fee is not a premium as defined in 33-15-102.

(3) Each violation of this section shall be punishable under 33-1-104."

NEW SECTION. Section 30. Extension of authority. Any existing authority of the commissioner of insurance to make rules on the subject of the provisions of this act is extended to the provisions of this act.

NEW SECTION. Section 31. Codification instruction. Sections 2, 9, 10, and 19 are intended to be codified as an integral part of Title 33, chapter 2, part 3, and the

provisions of Title 33, chapter 2, part 3, apply to sections 2, 9, 10, and 19.

NEW SECTION. Section 32. Saving clause. This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act.

NEW SECTION. Section 33. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 34. Effective date. This act is effective on passage and approval.

-End-

BUSINESS & LABOR COMMITTEE

50TH LEGISLATIVE SESSION

1987

Committee Members	District
Rep. Les Kitselman, Chairman	95
Rep. Fred Thomas, Vice Chairman	62
Rep. Bob Bachnini	14
Rep. Ray Brandewie	49
Rep. Jan Brown	46
Rep. Ben Cohen	3
Rep. Jerry Driscoll	92
Rep. William Glaserl	98
Rep. Larry Grinde	30
Rep. Stella Jean Hansen	57
Rep. Tom Jones	4
Rep. Lloyd McCormick	38
Rep. Gerald Nisbet	35
Rep. Bob Pavlovich	70
Rep. Bruce Simon	91
Rep. Clyde Smith	5
Rep. Charles Swysgood	73
Rep. Norm Wallin	78

Secretary

Elsie Sebens-Armstrong

Staff

Paul Verdon

CS-32
1985

STATUS SHEET

50th LEGISLATIVE SESSION

BUSINESS AND LABOR COMMITTEE

HOUSE BILL NUMBER	ENTERED COM. DATE	DATE CON-SIDERED	OUT OF COM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMENDED DATE	DO NOT PASS AS AMENDED DATE	BE CON-CURRED IN DATE	BE NOT CON-CURRED IN DATE	BE CON-CURRED IN AMENDED DATE	BE NOT CONCURR IN AS AMENDE DATE
699	2/13/87	2/17/87	2/17/87			2/17/87					
719	2/13/87	2/17/87	tabled 2/17/87								
723	2/13/87	2/17/87	tabled 2/17/87								
727	2/13/87	2/16/87	2/16/87			2/16/87					
728	2/13/87	2/17/87	tabled 2/17/87								
763	2/16/87	2/18/87	tabled 2/18/87								
765	2/16/87	2/18/87	2/18/87	2/18/87							
769	2/16/87	2/18/87	2/18/87			2/18/87					
771	2/16/87	2/18/87	2/18/87	2/18/87							
772	2/16/87	2/18/87	2/18/87			2/18/87					
784	2/17/87	2/19/87	2/19/87			2/19/87					
789	2/17/87	2/19/87	2/24/87			2/24/87					
796	2/17/87	2/19/87	2/19/87	2/19/87							
799	2/18/87	2/19/87	tabled 2/19/87								

se a separate sheet for Senate Bills, House Bills, and Resolutions.

MINUTES OF THE MEETING
BUSINESS AND LABOR COMMITTEE
50TH LEGISLATIVE SESSION

February 18, 1987

The meeting of the Business and Labor Committee was called to order by Chairman Les Kitselman on February 18, 1987 at 8:00 a.m. in Room 312-F of the State Capitol.

ROLL CALL: All members were present.

HOUSE BILL NO. 769 - Continuous Certificates For Certain Insurers, sponsored by Rep. John Patterson, House District No. 97, Yellowstone County. Rep. Patterson stated this bill was at the request of the State Auditor. He commented the bill provides that certificates of authority for farm mutual insurers, benevolent associations, and fraternal benefit societies be continuous rather than annually renewable. He explained that under current law the certificates are only valid for one year and then expire. He said the procedure results in a considerable amount of paper work for the State Auditor's office each year.

PROPONENTS

Jim Borchardt, chief examiner, Montana Insurance Department, State Auditor's Office. Mr. Borchardt presented a certificate as an example of what was necessary for 39 different associations. He said the department would prefer to issue one certificate and then have the association pay the fees rather than reissue it. He submitted proposed amendments by the State Auditor's Office. Exhibit No. 1.

OPPONENTS

None.

QUESTIONS

None.

CLOSING

Rep. Patterson made no further comments.

HOUSE BILL NO 771 - Revise Surplus Lines Insurance Laws, sponsored by Rep. William Glaser, House District No. 98, Lockwood. Rep. Glaser stated this bill was at the request of the State Auditor's Office.

PROPONENTS

Kathy Irigoin, State Auditor's Office. Ms. Irigoin stated that the reason they requested this bill is that surplus lines insurance has become an important part of their office recently. She said surplus lines insurance is insurance that is placed with companies that don't have a license in the state but sell a type of insurance that no one who does have a license in the state sells. She pointed out that with a shortage of insurance, the surplus lines insurance market has become important. She said the surplus lines laws were reviewed and compared to the most recent NAIC models and the revisions were patterned after that model. Exhibit No. 2.

OPPONENTS

None.

QUESTIONS

None.

HOUSE BILL NO. 763 - Defining Casino; Authorizing Local Licensure, sponsored by Rep. Kelly Addy, House District 94 Billings. Rep. Addy was introduced because of the various 24 hour betting parlors in Billings and the local authorities have no further opportunities to control these casinos, because they are operating on a 24 hour basis. He said problems developed, such as public intoxication, and were now on a 24 hour basis. He said because there is wagering, the establishment is able to sell or give away food and alcohol because they can make their profits on the card games. He commented that this is resulting in the loss of business to the fast food establishments and other food establishments. He added the bill would allow the local gambling board to license those establishments and have some control over their activities.

PROPONENTS

None.

OPPONENTS

None.

QUESTIONS

Rep. Pavlovich asked if there was a city ordinance prohibiting selling liquor after 2:00 a.m. Rep. Addy responded they do not have that authority in Billings, and there has been a problem with intoxicated people on the streets after 2:00 a.m. He said it was unfair competition to the legitimate

Rep. Thomas moved that House Bill NO. 769 DO PASS AS AMENDED. The motion carried unanimously.

ACTION ON HOUSE BILL NO. 771

Rep. Glaser moved that House Bill No. 771 DO PASS. The motion carried unanimously.

ACTION ON HOUSE BILL NO. 772

Rep. Jones moved that House Bill No. 772 DO PASS.

Rep. Driscoll moved to amend on page 3, line 3, following "means wage rates", insert, "including fringe benefits for health and welfare and pension contributions and travel allowance provisions".

Rep. Brandewie stated they discussed the amendment and it makes it clearer as to what the exemptions are for heavy highway construction.

Rep. Driscoll's motion for the amendment was voted on and the motion carried unanimously.

Rep. Jones moved an amendment to correct the word "wate" to "wage" on page 1, line 14. The motion carried unanimously.

Rep. Wallin asked what Rep. Glaser meant by "at least ten districts" stated in the bill. Rep. Glaser responded that there was concern by the rural areas that they were being tied into the major business centers where traditionally the wages have been higher, so the prevailing wage for the local smaller areas were not typical of that area, so the 10 districts were formed.

Rep. Driscoll commented about wage information surveys sent to contractors. He said if there were any more areas, more people would be needed to disseminate the information.

Rep. Wallin asked why use the term, "at least", why not just say 10, 12 or 15 districts.

Rep. Brandewie said that "at least ten districts" addresses the situation and allows the Commissioner more flexibility. He said "at least ten" forces the commissioner to recognize rural areas. He commented that the "mean" or "average" has never moved on prevailing wages, and now with the weighted average, it will bring wage rates into line with competition.

BUSINESS & LABOR COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date FEBRUARY 18, 1987

NAME	PRESENT	ABSENT	EXCUSED
REP. LES KITSELMAN, CHAIRMAN	✓		
REP. FRED THOMAS, VICE-CHAIRMAN	✓		
REP. BOB BACHINI	✓		
REP. RAY BRANDEWIE	✓		
REP. JAN BROWN	✓		
REP. BEN COHEN	✓		
REP. JERRY DRISCOLL	✓		
REP. WILLIAM GLASER	✓		
REP. LARRY GRINDE	✓		
REP. STELLA JEAN HANSEN	✓		
REP. TOM JONES	✓		
REP. LLOYD MCCORMICK	✓		
REP. GERALD NISBET	✓		
REP. BOB PAVLOVICH	✓		
REP. BRUCE SIMON	✓		
REP. CLYDE SMITH	✓		
REP. CHARLES SWYSGOOD	✓		
REP. NORM WALLIN	✓		

STANDING COMMITTEE REPORT

February 13 19 87

Mr. Speaker: We, the committee on BUSINESS AND LABOR

report HOUSE BILL NO. 771

☒ do pass
☐ do not pass

☐ be concurred in
☐ be not concurred in

☐ as amended
☐ statement of intent attached

REP. LES KITSELMAN Chairman

FIRST reading copy (WHITE color)

EXHIBIT 2
DATE 2/18/87
HB 771

INFORMATION SHEET
HOUSE BILL 771
SPONSOR: REPRESENTATIVE GLASER

I. Background

The Legislature enacted the present Surplus Lines Insurance Law in 1959. Only three sections were amended since 1959 (sections 33-2-302, 33-2-311, and 33-2-307, MCA). In 1986, the NAIC adopted a new Model Surplus Lines Insurance Law. HB 771 amends the present Surplus Lines Insurance Law to conform with the 1986 NAIC Model Surplus Lines Insurance Law. The only substantive departure from the 1986 NAIC Model Surplus Lines Insurance Law in HB 771 is that subsection (3) of section 7 permits a surplus lines agent to collect a placement fee; whereas, the NAIC Model does not. HB 771 permits unauthorized insurers that have established satisfactory evidence of good reputation and financial integrity to qualify as eligible surplus lines insurers.

II. Purpose

The purposes of HB 771 are to (1) protect persons seeking insurance in Montana; (2) permit surplus lines insurance to be placed with reputable and financially sound unauthorized insurers; (3) establish a system of regulation that will permit orderly access to surplus lines insurance in this state and encourage authorized insurers to provide new and innovative types of insurance to Montana consumers; and (4) protect Montana revenues. HB 771 clarifies and updates The Surplus Lines Insurance Law in Montana.

III. Section by section explanation

Section 1 provides (1) the short title of HB 771, which is "The Surplus Lines Insurance Law"; and (2) the purpose of HB 771.

Section 2 provides definitions.

Section 3 lists the conditions that must be met before insurance may be procured through a licensed surplus lines agent from an unauthorized insurer, i.e., the unauthorized insurer is an eligible surplus lines insurer; the surplus lines agent cannot procure, after a diligent search among authorized insurers, the full amount or kind of insurance; the insurance is not procured to obtain a lower premium rate or better terms of the insurance contract; and all requirements of The Surplus Lines Insurance Law are met.

Section 4 requires each surplus lines insurance policy to be filed with the commissioner and endorsed as "issued in an unauthorized insurer under The Surplus Lines Insurance Law under agent license No. _____" and "NOT covered by the property and casualty guaranty fund of this state if the unauthorized insurer becomes insolvent".

Section 5 provides that surplus lines insurance procured in accordance with The Surplus Lines Insurance Law is valid.

Section 6 provides that an agent licensed in Montana may not procure a surplus lines insurance contract unless he is licensed as a resident property, casualty, and surety insurance agent; possesses a current surplus lines insurance license; and has been licensed as a property, casualty, and surety insurance agent continuously for 5 years or more.

Section 7 provides that a licensed surplus lines agent may (1) place surplus lines insurance, in compliance with The surplus Lines Insurance Law, with any eligible surplus lines insurer; (2) accept business from a licensed insurance agent and receive compensation for doing that; and (3) collect a placement fee of 0.5 percent of the premium charged to cover the costs of issuing and servicing the surplus lines insurance policy (the fee may not be less than $10 or more than $100).

Section 8 lists the requirements that an unauthorized insurer must meet to be an eligible surplus lines insurer. Basically, an insurer that establishes satisfactory evidence of good reputation and financial integrity may be approved as an eligible surplus lines insurer.

Section 9 permits the withdrawal of eligibility from a surplus lines insurer if it becomes financially unsound; no longer meets eligibility requirements; willfully violates Montana law; or does not make reasonably prompt payment of just losses and claims in Montana or elsewhere.

Section 10 permits surplus lines agents to form a surplus lines advisory organization.

Section 11 lists the requirements for a surplus lines insurance policy, cover note, or certificate.

Section 12 provides that payment of premium to a surplus lines agent is considered to be payment to the insurer.

Section 13 requires each surplus lines agent to keep and make available for examination by the commissioner a separate record and account of all business transacted under his license within 5 years after the issuance of the surplus lines insurance to which it relates.

Section 14 requires each surplus lines agent to pay premium tax at the same rate imposed upon authorized insurers for insurance business transacted by him during the preceding calendar year.

Section 15 provides a penalty for failure to file an annual statement or pay premium tax.

Section 16 permits the revocation or suspension of a surplus lines agent license.

Section 17 provides that a surplus lines insurer may be sued in Montana in the district court of the plaintiff's county of residence.

Section 18 requires every surplus lines insurer transacting surplus lines insurance in Montana to appoint the commissioner of insurance as its agent for service of legal process.

Section 19 provides that a surplus lines agent who represents or aids an unauthorized in violation of The Surplus Lines Insurance Law is guilty of a misdemeanor.

Section 20 permits reasonable rulemaking.

Section 21 lists the types of insurance that are exempt from The Surplus Lines Insurance Law.

Sections 22 through 29 amend existing law to change "surplus line" to "surplus lines".

IV. Conclusion

HB 771 updates The Surplus Lines Insurance Law in Montana while protecting Montana insurance consumers by permitting surplus lines insurance to be placed with reputable and financially sound unauthorized insurers. HB 771 establishes a system of regulation that will permit orderly access to surplus lines insurance in Montana and permits surplus lines agents to collect a placement fee for their efforts.

MONTANA STATE SENATE

BUSINESS AND INDUSTRY COMMITTEE

50TH LEGISLATURE

COMMITTEE MEMBERS:

Senator Allen C. Kolstad, Chairman
Senator Ted Neuman, Vice Chairman
Senator Paul Boylan
Senator Delwyn Gage*
Senator Tom Hager
Senator Harry H. McLane
Senator Darryl Meyer
Senator Gene Thayer
Senator Mike Walker
Senator Cecil Weeding
Senator Bob Williams

STAFF ATTORNEY: Mary McCue

COMMITTEE SECRETARY: Carolyn A. Linden

*Sen. Gage was unable to attend most of the meetings due to a conflict with other committees. He was replaced by Sen. Hager.

BOOK: ONE OF THREE

INCLUSIVE DATES: 1/6/87 THROUGH 2/6/87

CHAIRMAN--SEN. ALLEN C. KOLSTAD
NORMAL SCHEDULE==> SITE: ROOM 410 DAYS: MON THRU FRI TIME: 10:00 A.M.
SECRETARY-CAROLYN LINDEN

--BILL NO---	REFER DATE---	HEARING DATE---	CONSIDERATION DATES----------	COMMITTEE ACTION----------	REREFERRED TO COMM----	DATE OUT-
HB0771	2/23	3/17	3/17/87	CONCUR AS AMENDED		3/17/87
GLASER, BILL			REVISE SURPLUS LINES INSURANCE LAWS			
HB0796	3/02				STATE ADMIN.	
DRISCOLL, JERRY			LIMITING HOURS OF PLAY AND NUMBERS OF BINGO MACHINES; CAPPING LICENSE FEES			
HB0803	3/02	3/09	3/9/87; 3/10/87	CONCUR		3/10/87
CAMPBELL, BUD			REVISE INSURANCE AGENTS LICENSING LAWS			
HB0806	3/02	3/09	3/9/87; 3/10/87	CONCUR AS AMENDED	BUSINESS & LABOR	3/10/87
PAVLOVICH, BOB			REVISING MONTANA LIFE AND HEALTH GUARANTY ACT			
HB0806	3/17	3/18	3/18/87; 3/23/87; 3/26/87	CONCUR AS AMENDED		3/26/87
PAVLOVICH, BOB			REVISING MONTANA LIFE AND HEALTH GUARANTY ACT			
HB0817	3/13	3/20	3/20/87; 3/27/87	CONCUR		3/27/87
GLASER, BILL			INDEPENDENT LIABILITY FUNDS FOR SMALL BUSINESS			
HB0823	3/02	3/12	3/12/83; 3/16/87	CONCUR AS AMENDED		3/16/87
SQUIRES, CAROLYN			REVISE LAWS RELATING TO DISABILITY INSURANCE			
HB0849	4/03	4/09	4/9/87	CONCUR		4/9/87
QUILICI, JOE			FUNDING FOR MONTANA STATEHOOD CENTENNIAL OFFICE			
HB0862	4/03	4/08	HEARING CANCELED		FINANCE & CLAIMS	
WINSLOW, CAL			MONTANA PROGRESSIVE DEVELOPMENT ACT			
HB0863	3/25	3/31	3/31/87; 4/8/87; 4/9/87	CONCUR AS AMENDED		4/8/87
WALLIN, NORM			NET INCOME TAX ON VIDEO POKER AND KENO MACHINES			
HB0905	4/03	4/08	4/8/87; 4/9/87	TABLED		TABLED 4/9/87
WINSLOW, CAL			PROMOTE ECONOMIC DEVELOPMENT THROUGH INVESTMENT IN NEW TECHNOLOGY			

CONSIDERATION OF HOUSE BILL NO. 771: Representative William Glaser, House District No. 98 in Billings, in the chief sponsor of HB 771. This is an act to amend the laws relating to the authorization of surplus lines insurers, agents, and insurance, and providing an immediate effective date. This bill is at the request of the Office of the State Auditor.

Representative Glaser stated that this bill amends the laws relating to surplus line insurers to more closely regulate these insurers. A surplus line insurer supplies coverage that cannot be procured in this state from authorized insurers. A surplus line agent now must be licensed as such. The bill provides that insurance may be procured through a licensed surplus lines agent if the full amount or kind of insurance cannot be obtained from authorized insurers after a diligent search by the insurance agent among authorized insurers writing the kind and class of insurance sought. The bill sets licensing standards, provides for a placement fee, and deals with withdrawal of eligibility from a surplus lines insurer. (EXHIBIT 3)

PROPONENTS:

Kathy Irigion, representing the Office of the State Auditor, stood in support of the bill. (EXHIBIT 4)

Senator Kolstad asked Ms. Irigion to define the term "surplus lines insurance". She stated that "surplus lines insurance" is when someone contacts a Montana licensed insurance company to buy a certain kind of insurance and that company does not have the kind of insurance the client requests, so the company goes to an insurance company out of state to buy the requested insurance.

Roger McGlenn, representing the Independent Insurance Agent Association of Montana, stood in support of the bill. He stated probably the best known "surplus lines insurance company" doing business in the state of Montana is Lloyd's of London. It is not a licensed company in Montana, but it is probably the largest insurance company in the world.

OPPONENTS: There were no opponents to House Bill No. 771.

DISCUSSION ON HOUSE BILL NO. 771:

Senator Weeding asked Ms. Irigion if chemical applicators and those kinds of people, which have been rejected from insurance companies would be able to receive coverage under this bill. Yes, they would be able to receive insurance probably from surplus lines insurance companies.

Roger McGlenn stated that some surplus lines insurance sell the coverage at a reduced rate.

Representative Glaser closed.

EXECUTIVE ACTION ON HOUSE BILL NO. 771:

A motion was made by Senator Meyer that HB 771 be amended as follows:

1. Page 9, line 22.
Strike: "year"
Insert: "years"

Motion carried.

MOTION: A motion was made by Senator Williams and seconded by Senator Meyer that HB 771 BE CONCURRED IN AS AMENDED. Motion carried unanimously.

Senator Thayer will carry HB 771 on the floor of the Senate.

CONSIDERATION OF HOUSE BILL NO. 372: Representative Ron Miller of House District No. 34 in Great Falls, is the chief sponsor of HB 372. This bill is an act revising certain insurance fees, and providing an effective date.

Representative Miller stated that HB 372 raises certain insurance fees and provides for certain other fees. The fee for a domestic insurer to file for an original certificate of authority is raised from $30 to $300. This is the amount foreign insurers presently pay. This bill was introduced at the request of the Office of the State Auditor.

The Montana Insurance Department did a survey of the insurance fees charged in Idaho, North and South Dakota, Utah, and Wyoming. In comparison, Montana's insurance fees were low. The purpose of HB 372 is to bring the fees charged to the insurance company's agents by the Montana Insurance Department into line with the fees charged by the insurance departments of the neighboring states. The department is understaffed and underfunded, and therefore, unable to enforce the insurance laws as adequately as it should. HB 372 will also provide additional revenue for the department.

PROPONENTS:

Bonnie Tippy, representing the Montana Life Underwriters of Montana, rose in support of the bill. She stated that her group was particularly in favor of this bill because of the money that will be generated by this act has been appropriated to the insurance department for their use in enforcing Montana's insurance laws.

Kathy Irigion, representing the Office of the State Auditor, stood in support of the bill. (EXHIBIT 5)

Business & Industry COMMITTEE

50th LEGISLATIVE SESSION -- 1987 Date 3/17/87

NAME	PRESENT	ABSENT	EXCUSED
ALLEN C. KOLSTAD, CHAIRMAN	✓		
TED NEUMAN, VICE CHAIRMAN	✓		
PAUL BOYLAN	✓		
TOM HAGER	✓		
HARRY H. McLANE	✓		
DARRYL MEYER	✓		
GENE THAYER	✓		
MIKE WALKER	✓		
CECIL WEEDING	✓		
BOB WILLIAMS	✓		

Each day attach to minutes.

DATE 3/11/87

COMMITTEE ON Business & Industry

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Che Suppo
James W. Burchardt	State Auditor	769	V
Mary Lou Munn	State Auditor	765363	V
John Paul	HDC47	HB487	V
John Paul	HD97	HB769	V
Ken Hassler	MAIU	HB373	X
Jim Lynch	Ind Ins Agents Assoc of Montana	372	V
Kathy Trigoin	State Auditor's Office	HB372 HB771	X
Roger McGlenn	Independent Ins Agents Assoc of MT	HB372 HB487 HB771	X

(Please leave prepared statement with Secretary)

SENATE BUSINESS & INDUSTR
EXHIBIT NO. 3
DATE 3/17/87
BILL NO. HB 771

WRITTEN TESTIMONY OF STATE AUDITOR
HOUSE BILL 771
SPONSOR--REPRESENTATIVE GLASER
March 17, 1987

I. Background

The Legislature enacted the present Surplus Lines Insurance Law in 1959. Only three sections were amended since 1959 (sections 33-2-302, 33-2-311, and 33-2-307, MCA). In 1986, the NAIC adopted a new Model Surplus Lines Insurance Law. HB 771 amends the present Surplus Lines Insurance Law to conform with the 1986 NAIC Model Surplus Lines Insurance Law. The only substantive departure from the 1986 NAIC Model Surplus Lines Insurance Law in HB 771 is that subsection (3) of section 7 permits a surplus lines agent to collect a placement fee; whereas, the NAIC Model does not. HB 771 permits unauthorized insurers that have established satisfactory evidence of good reputation and financial integrity to qualify as eligible surplus lines insurers.

II. Purpose

The purposes of HB 771 are to (1) protect persons seeking insurance in Montana; (2) permit surplus lines insurance to be placed with reputable and financially sound unauthorized insurers; (3) establish a system of regulation that will permit orderly access to surplus lines insurance in this state and encourage authorized insurers to provide new and innovative types of insurance to Montana consumers; and (4) protect Montana revenues. HB 771 clarifies and updates The Surplus Lines Insurance Law in Montana.

III. Section by section explanation

Section 1 provides (1) the short title of HB 771, which is "The Surplus Lines Insurance Law"; and (2) the purpose of HB 771.

Section 2 provides definitions.

Section 3 lists the conditions that must be met before insurance may be procured through a licensed surplus lines agent from an unauthorized insurer, i.e., the unauthorized insurer is an eligible surplus lines insurer; the surplus lines agent cannot procure, after a diligent search among authorized insurers, the full amount or kind of insurance; the insurance is not procured to obtain a lower premium rate or better terms of the insurance contract; and all requirements of The Surplus Lines Insurance Law are met.

Section 4 requires each surplus lines insurance policy be filed with the commissioner and endorsed as "issued by unauthorized insurer under The Surplus Lines Insurance Law under agent license No. _____" and "NOT covered by the property and casualty guaranty fund of this state if the unauthorized insurer becomes insolvent".

Section 5 provides that surplus lines insurance procured in accordance with The Surplus Lines Insurance Law is valid.

Section 6 provides that an agent licensed in Montana may not procure a surplus lines insurance contract unless he is licensed as a resident property, casualty, and surety insurance agent; possesses a current surplus lines insurance license; and has been licensed as a property, casualty, and surety insurance agent continuously for 5 years or more.

Section 7 provides that a licensed surplus lines agent may (1) place surplus lines insurance, in compliance with The Surplus Lines Insurance Law, with any eligible surplus lines insurer; (2) accept business from a licensed insurance agent and receive compensation for doing that; and (3) collect a placement fee of 0.5 percent of the premium charged to cover the costs of issuing and servicing the surplus lines insurance policy (the fee may not be less than $10 or more than $100).

Section 8 lists the requirements that an unauthorized insurer must meet to be an eligible surplus lines insurer. Basically, an insurer that establishes satisfactory evidence of good reputation and financial integrity may be approved as an eligible surplus lines insurer.

Section 9 permits the withdrawal of eligibility from a surplus lines insurer if it becomes financially unsound; no longer meets eligibility requirements; willfully violates Montana law; or does not make reasonably prompt payment of just losses and claims in Montana or elsewhere.

Section 10 permits surplus lines agents to form a surplus lines advisory organization.

Section 11 lists the requirements for a surplus lines insurance policy, cover note, or certificate.

Section 12 provides that payment of premium to a surplus lines agent is considered to be payment to the insurer.

Section 13 requires each surplus lines agent to keep and make available for examination by the commissioner a separate record and account of all business transacted under his license within 5 years after the issuance of the surplus lines insurance to which it relates.

SENATE BUSINESS &
EXHIBIT NO. 3
DATE 3-17-
BILL NO. H.B.

Section 14 requires each surplus lines agent to pay premium tax at the same rate imposed upon authorized insurers for insurance business transacted by him during the preceding calendar year.

Section 15 provides a penalty for failure to file an annual statement or pay premium tax.

Section 16 permits the revocation or suspension of a surplus lines agent license.

Section 17 provides that a surplus lines insurer may be sued in Montana in the district court of the plaintiff's county of residence.

Section 18 requires every surplus lines insurer transacting surplus lines insurance in Montana to appoint the commissioner of insurance as its agent for service of legal process.

Section 19 provides that a surplus lines agent who represents or aids an unauthorized in violation of The Surplus Lines Insurance Law is guilty of a misdemeanor.

Section 20 permits reasonable rulemaking.

Section 21 lists the types of insurance that are exempt from The Surplus Lines Insurance Law.

Sections 22 through 29 amend existing law to change "surplus line" to "surplus lines".

IV. Conclusion

HB 771 updates The Surplus Lines Insurance Law in Montana while protecting Montana insurance consumers by permitting surplus lines insurance to be placed with reputable and financially sound unauthorized insurers. HB 771 establishes a system of regulation that will permit orderly access to surplus lines insurance in Montana and permits surplus lines agents to collect a placement fee for their efforts.

SENATE BUSINESS & INDUSTR
EXHIBIT NO. 3
DATE 3-17-87
BILL NO. H.B. 771

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 4
DATE 3/17/87
BILL NO. HB 771

BILL SUMMARY/COMMENT REPORT

Date/Updated 2/16/87

Bill # HB 771 Short title Surplus Lines Sponsor Glaser Staff Kathy

Summary/Key points of bill:

Section 1 provides (1) the short title of HB 771, which is "The Surplus Lines Insurance Law"; and (2) the purpose of HB 771.

Section 2 provides definitions.

Section 3 lists the conditions that must be met before insurance may be procured through a licensed surplus lines agent from an unauthorized insurer, i.e., the unauthorized insurer is an eligible surplus lines insurer; the surplus lines agent cannot procure, after a diligent search among authorized insurers, the full amount or kind of insurance; the insurance is not procured to obtain a lower premium rate or better terms of the insurance contract; and all requirements of The Surplus Lines Insurance Law are met.

Section 4 requires each surplus lines insurance policy to be filed with the commissioner and endorsed as "issued in an unauthorized insurer under The Surplus Lines Insurance Law under agent license No. _____" and "NOT covered by the property and casualty guaranty fund of this state if the unauthorized insurer becomes insolvent".

Section 5 provides that surplus lines insurance procured in accordance with The Surplus Lines Insurance Law is valid.

Section 6 provides that an agent licensed in Montana may not procure a surplus lines insurance contract unless he is licensed as a resident property, casualty, and surety insurance agent; possesses a current surplus lines insurance license; and has been licensed as a property, casualty, and surety insurance agent continuously for 5 years or more.

Section 7 provides that a licensed surplus lines agent may (1) place surplus lines insurance, in compliance with The surplus Lines Insurance Law, with any eligible surplus lines insurer; (2) accept business from a licensed insurance agent and receive compensation for doing that; and (3) collect a placement fee of 0.5 percent of the premium charged to cover the costs of issuing and servicing the surplus lines insurance policy (the fee may not be less than $10 or more than $100).

Section 8 lists the requirements that an unauthorized insurer must meet to be an eligible surplus lines insurer. Basically, an insurer that establishes satisfactory evidence of good reputation and financial integrity may be approved as an eligible surplus lines insurer.

Section 9 permits the withdrawal of eligibility from a surplus line insurer if it becomes financially unsound; no longer meets eligibility requirements; willfully violates Montana law; or does not make reasonable prompt payment of just losses and claims in Montana or elsewhere.

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Section 11 lists the requirements for a surplus lines insurance policy, cover note, or certificate.

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Section 19 provides that a surplus lines agent who represents or aids an unauthorized in violation of The Surplus Lines Insurance Law is guilty of a misdemeanor.

Section 20 permits reasonable rulemaking.

Section 21 lists the types of insurance that are exempt from The Surplus Lines Insurance Law.

Sections 22 through 29 amend existing law to change "surplus line" to "surplus lines".

2. Purpose/Background:

The Legislature enacted the current Surplus Lines Insurance Law in 1959. Sections 33-2-302 and 33-2-311, MCA, were amended slightly in 1979. Section 33-2-307 was amended in 1981. No other sections were amended since 1959. In 1986, the NAIC adopted a new Model Surplus Lines Law. H

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771 amends the current Surplus Lines Insurance Law to conform to the 1986 NAIC Model Surplus Lines Insurance Law. The only substantive departure from the 1986 NAIC Model Surplus Lines Insurance Law in HB 771 is that subsection (3) of section 7 permits a surplus lines agent to collect a placement fee. HB 771 provides authority to do some of the things we do currently. For example, HB 771 provides authority to maintain a white list of eligible surplus lines insurers.

3. Recommended position/and explanation: Support

4. Impact to Auditor's Office:

a. Fiscal (staff, resources, etc.)--none because HB 771 simply updates existing law
b. Duties, responsibilities, workload--remain the same
c. Estimated costs--none

5. Groups/Areas affected:

HB 771 will affect surplus lines insurers and agents but not adversely because it simply clarifies and updates existing law.

6. Long-term effects:

HB 771 should improve the quality and availability of surplus lines insurance in Montana because it provides this office clear authority to maintain a white list of eligible surplus lines insurers and permits surplus lines agents to collect a placement fee.

7. Additional comments/Info/Updates:

I know of no opponents to HB 771.

8. Amendments: None

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STANDING COMMITTEE REPORT

MARCH 17, 19 87

MR. PRESIDENT

We, your committee on BUSINESS AND INDUSTRY

having had under consideration HOUSE BILL No. 771

THIRD reading copy (BLUE color)

SPONSOR (THAYER)

REVISE SURPLUS LINES INSURANCE LAWS

respectfully report as follows: That HOUSE BILL No. 771

be amended as follows:

Page 9, line 22.
Strike: "year"
Insert: "years"

AND AS AMENDED,

BE CONCURRED IN

~~DO PASS~~

~~DO NOT PASS~~

SENATOR ALLEN C. KOLSTAD, Chairman.